NINETY-SECOND REPORT

OF THE

NORTH CAROLINA UTILITIES COMMISSION ORDERS AND DECISIONS

ISSUED FROM
JANUARY 1, 2002 THROUGH DECEMBER 31, 2002

NINETY-SECOND REPORT
# of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 2002, through December 31, 2002

Jo Anne Sanford, Chair

J. Richard Conder, Commissioner

Robert V. Owens, Jr., Commissioner

Sam J. Ervin, IV, Commissioner

Lorinzo L. Joyner, Commissioner

James Y. Kerr, II, Commissioner

Michael S. Wilkins, Commissioner

North Carolina Utilities Commission
Office of the Chief Clerk
Mrs. Geneva S. Thigpen
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

The Statistical and Analytical Report of the North Carolina Utilities Commission is printed separately from the volume of Orders and Decisions and will be available from the Office of the Chief Clerk of the North Carolina Utilities Commission upon order.

LETTER OF TRANSMITTAL

December 31, 2002

The Governor of North Carolina
Raleigh, North Carolina

Sir:

Pursuant to the provisions of Section 62-17(b) of the General Statutes of North Carolina, providing for the annual publication of the final decisions of the Utilities Commission on and after January 1, 2002, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 2002, and ending December 31, 2002.

The additional report provided under G.S. 62-17(a), comprising the statistical and analytical report of the Commission, is printed separately from this volume and will be transmitted immediately upon completion of printing.

Respectfully submitted,

NORTH CAROLINA UTILITIES COMMISSION

Jo Anne Sanford, Chair

J. Richard Conder, Commissioner

Robert V. Owens, Jr., Commissioner

Sam J. Ervin, IV, Commissioner

Lorinzo L. Joyner, Commissioner

James Y. Kerr, II, Commissioner

Michael S. Wilkins, Commissioner

Geneva S. Thigpen, Chief Clerk

TABLE OF CONTENTS

TABLE OF ORDERS AND DECISIONS PRINTED i

GENERAL ORDERS 1
GENERAL ORDERS – ELECTRICITY 1
E-100, SUB 85A (08/20/02) 1
GENERAL ORDERS – NATURAL GAS 4
G-100, SUB 84 (02/26/02) 4
GENERAL ORDERS -- TELECOMMUNICATIONS 17
P-100, SUB 58A (06/19/02) 17
P-100, SUB 72A (11/01/02) 23
P-100, SUB 99 (12/27/02) 30
P-100, SUB 133D (04/05/02) 143
P-100, SUB 133J (09/24/02) 146
P-100, SUB 133K (05/22/02) 177

ELECTRICITY 385
ELECTRICITY -- COMPLAINT 385
E-2, SUB 808 (10/25/02) 385
E-2, SUB 811 (09/18/02) 390
E-7, SUB 675 (03/12/02) 393
ELECTRICITY -- MISCELLANEOUSE 397
E-7, SUB 722 (12/11/02) 397

NATURAL GAS 415
NATURAL GAS – MERGER 415
G-9, SUB 466; G-3, SUB 251 (10/08/02) 415
NATURAL GAS – RATES 432
G-21, SUB 431 (09/23/02) 432
NATURAL GAS – MISCELLANEOUS 441
G-46, SUB 0 (03/12/02) 441

TELECOMMUNICATIONS 443
TELECOMMUNICATIONS – CERTIFICATES 443
P-120, SUB 15; P-120, SUB 16 (12/18/02) 443
TELECOMMUNICATIONS – SHOW CAUSE 452
P-140, SUB 79 (10/24/02) 452
TELECOMMUNICATIONS – TARIFFS 475
P-19, SUB 432 (04/26/02) 475

INDEX OF ORDERES PRINTED 486

ORDERS AND DECISIONS LISTED 488

2002 ANNUAL REPORT OF ORDER AND DECISIONS OF THE NORTH CAROLINA UTILITIES COMMISSION

TABLE OF ORDERS AND DECISIONS PRINTED

NOTE: For General Orders, see Index on page 486

PAGE

AT&T Communications of the Southern States, LLC
P-140, Sub 79 – Recommended Order Finding Violations and Imposing Penalty (10/24/2002) 452

Carolina Natural Gas Corporation
G-21, Sub 431 - Order Granting Petition to Increase Margin and Rebalance Rates (09/23/2002) 432

Carolina Power & Light Company
E-2, Sub 808 – Recommended Order (10/25/2002) 385
E-2, Sub 811 – Recommended Order Granting Complaint (09/18/2002) 390

Delphi Development, LLC
G-46, Sub 0 - Order Denying Request for Master Metering (03/12/2002) 441

Duke Power Company, a Division of Duke Energy Corporation
E-7, Sub 675 - Order Dismissing Complaint Due to Lack of Jurisdiction and Closing Docket (03/12/2002) 393
E-7, Sub 722 - Order Ruling on Motions and Approving Settlement Agreement (12/11/2002) 397

Piedmont Natural Gas Company, Inc.
G-9, Sub 466; G-3, Sub 251 – Order Approving Petition (10/08/2002) 415

Pineville Telephone Company
P-120, Sub 15; P-120, Sub 16 – Order Allowing for CLP and IXC Certification (12/18/2002) 443

Verizon South, Inc.
P-19, Sub 432 – Order Allowing Bifurcation (04/26/2002) 475

DOCKET NO. E-100, SUB 85A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation of (1) Certification of New Electric)
Generating Capacity to Serve Off-System Loads) ORDER DENYING
and (2) the Priority of Electric Service Provided) RECONSIDERATION
to Off-System Loads Versus Native Retail Loads)

BY THE COMMISSION: The Commission initiated this docket on March 11, 2002, and requested briefs as to the jurisdiction of this Commission over regulated utilities' signing wholesale contracts at native load priority. The Commission also asked parties to propose any related issues needing further comment and decision. Briefs and proposed issues were filed by Carolina Power & Light Company (CP&L), Duke Power Company (Duke), North Carolina Electric Membership Corporation (NCEMC), the Public Staff, the Attorney General (AG), Carolina Utility Customers Association, Inc. (CUCA), and the Carolina Industrial Group for Fair Utility Rates II (CIGFUR).

On July 10, 2002, the Commission issued an order dealing with the matter of jurisdiction. The Commission reviewed all the arguments presented in the briefs and concluded that it has jurisdiction and authority under State law to review, before they are signed, proposed wholesale contracts by a regulated North Carolina public utility granting native load priority to be supplied from the same plant as retail ratepayers and to take appropriate action if necessary to secure and protect reliable service to retail customers in North Carolina. The Commission stated that it would issue a separate order as to further proceedings to be held on the related issues proposed by the parties.

On July 26, 2002, CP&L, Duke, and NCEMC filed a motion for reconsideration. Movants state that the brief they filed herein "explained" that the Commission has no jurisdiction over their wholesale activities, that federal jurisdiction over wholesale is "always present and controlling" even before a wholesale contract is signed, and that the Commission should therefore reconsider the July 10 Order. Movants go on to state that the July 10 Order is ambiguous as to how the Commission will review proposed wholesale contracts and unclear as to what action the Commission may take, and they ask for clarification so they may "precisely frame the issue for presentation on appeal."

CUCA responds that the motion for reconsideration presents no new information or new legal developments and should be denied. As to the request for clarification, CUCA argues that the Order is clear as written and that the Commission should reserve further decisions until it is presented with a proposed contract that the Commission finds harmful.

The AG first makes the point that although the July 10 Order is written in terms of reviewing proposed wholesale contracts before they are signed, the AG believes that the Commission has authority to act even after a wholesale contract is signed. The AG states that the Order reserves for future decision the procedures to be used for reviewing proposed wholesale contracts and that no reconsideration or clarification is in order now.

CIGFUR argues that reconsideration should be denied since movants have cited no new authority or argument and that clarification should be denied since the Commission has indicated that it will conduct further proceedings herein.

Finally, the Public Staff filed a response reiterating many of its arguments and citing the history of this docket and comments filed in other dockets. The Public Staff says that the motion for reconsideration offers no new arguments, that the Commission's order is unambiguous, that the nature of the review process that the Commission will undertake in the future is under consideration and subject to further order, and that nothing more can be expected at this time. The Public Staff finds the argument that FERC has jurisdiction even before a wholesale contract is signed to be "nonsensical." Further, the Public Staff notes that CP&L agreed to Regulatory Condition 20a in Docket No. E-2, Sub 760 (the Florida Progress merger proceeding) and that this condition would be meaningless if, as CP&L now argues, the Commission has no authority as to wholesale contracts that grant retail native load priority. The Public Staff argues that CP&L's present position could put the Florida Progress merger in jeopardy since CP&L "cannot explicitly agree that the Commission has authority to protect retail ratepayers, including affirmatively ordering CP&L not to enter into a contract that grants retail native load priority to a wholesale customer, in order to obtain approval of the merger and then challenge that authority when it is being exercised pursuant to the terms of the merger order."

The motion for reconsideration essentially presents nothing new; movants rely upon the arguments already presented in their brief. The Commission fully considered all of the briefs before issuing the July 10 Order. As to the request for clarification, the July 10 Order was only intended to address the matter of jurisdiction since that is a threshold issue. It is not appropriate for this Order to try to specify exactly how the Commission will exercise its jurisdiction or what the Commission might do in a particular case. The motion for reconsideration is denied. The Commission wishes to note for the record that, despite the arguments it is presenting now, CP&L recently filed Regulatory Condition 20a for Commission approval in Docket No. E-2, Sub 760 and this condition acknowledges that the Commission has authority to affirmatively order CP&L not to enter into a wholesale contract granting native load priority.

IT IS, THEREFORE, ORDERED that the motion for reconsideration filed herein on July 26, 2002, should be, and the same hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of August, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

Rg081902.03

Chair Jo Anne Sanford did not participate.
Commissioner James Y. Kerr, II, concurs.

DOCKET NO. E-100, SUB 85A

COMMISSIONER JAMES Y. KERR, II, concurring: I concur in the Commission's decision to deny reconsideration of the July 10 Order in this docket. I stand by the assertion of jurisdiction and the reasoning in that Order. I also agree that the Commission is not in a position at this time to clarify exactly how it intends to review wholesale contracts granting native load priority.

I write in concurrence to state my belief that the Commission needs to proceed with dispatch. As the past few months have shown, new proposed wholesale contracts may be presented to us at any time, and we owe it to all concerned to make expeditious decisions as to the "rules of the road" for these proceedings. Both the utilities and other parties are entitled to know their rights and responsibilities.

The Commission has two proceedings ready for action in this regard: further issues have been proposed for decision in this docket and, in a related docket, proposals are under consideration for clarifying CP&L's Regulatory Condition 20, which requires advance notice of wholesale contracts with native load priority. I urge the parties to a renewed cooperation in resolving their differences in these dockets, and I hope that the Commission will act promptly to decide matters that the parties cannot resolve on their own. These are important dockets for electric companies and consumers; much effort has been expended already; it is time to make decisions and get on with our respective businesses.

\s\ James Y. Kerr, II
Commissioner James Y. Kerr, II

DOCKET NO. G-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)
Hedging Commodity Costs by Natural) ORDER ON HEDGING
Gas Local Distribution Companies)

BY THE COMMISSION: During the winter of 2000 - 2001, the commodity cost of natural gas experienced unprecedented volatility and upward movement. Because North Carolina natural gas local distribution companies (LDCs) have generally been buying natural gas under contracts relying on market-sensitive prices, these commodity cost increases resulted in significant rate increases for retail sales customers under the purchased gas adjustment mechanism. On March 27, 2001, and April 9, 2001, the Commission held two informal meetings in order to gather information on steps that could be taken to protect ratepayers from extreme volatility in natural gas commodity costs. Such steps to stabilize commodity costs are generally referred to as "hedging." Although various hedging tools (including financial derivatives such as gas price futures contracts and options and fixed-price gas purchase contracts) are--and have been--available to mitigate price swings, LDCs have not made broad use of them due to concerns about the regulatory treatment that might be applied to such arrangements. The Public Staff suggested that a generic docket be opened for the purpose of examining hedging issues developed during this informal information-gathering process.

On June 1, 2001, the Commission opened this docket for the purpose of giving parties a more formal forum in which to raise and address issues concerning the hedging of natural gas commodity costs. Eastern North Carolina Natural Gas Corporation (E-NCNG), Frontier Energy, L.L.C. (Frontier), North Carolina Natural Gas Corporation (NCNG), NUI North Carolina Gas (NUI NC Gas), Piedmont Natural Gas Company, Inc. (Piedmont), Public Service Company of North Carolina, Inc. (PSNC), Toccoa Natural Gas (Toccoa), the Public Staff and the Attorney General (AG) were deemed to be parties to the proceeding. In addition, intervenor status was granted to the Carolina Utility Customers Association (CUCA), Inc., Enron North America Corp. (Enron), and, intervening as a group, the Greenville Utilities Commission, and the cities of Bessemer City, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby and Wilson, North Carolina (the Cities).

The Commission asked parties to address the following: (1)whether or not LDCs should hedge; and if the Commission concludes that LDCs should hedge; (2) whether hedging should be voluntary or mandatory; (3) how hedging should be accomplished, including what hedging mechanisms should be used and what percentage of the LDC's supply portfolio should be hedged; (4) who should bear the risks and costs of hedging; and (5) how the Commission should regulate and oversee hedging activities. The Commission invited the parties to suggest further issues regarding hedging.

All parties except E-NCNG and the Cities filed comments.

COMMENTS

In response to the Commission's questions, there was a general consensus that LDCs should consider hedging for system supply, with only two of the smaller LDCs, NUI NC Gas and Frontier, qualifying their responses. In general, NUI NC Gas and Frontier took the position that, because LDCs have different customer profiles, they may not have enough firm load to justify hedging.

With regard to the question of whether or not hedging should be mandatory, the question could be--and was--interpreted two ways: (1) should a hedging program be required, and (2) should the LDCs be required to actually hedge? Both interpretations provide insight. The LDCs, with the exception of Toccoa, all argued that hedging should be allowed but not required. Toccoa's position was that a hedging program should be mandatory, but that the LDC should have the discretion to refrain from hedging in certain time periods. The Public Staff felt that a program should be mandatory unless the LDC is excused by the Commission. CUCA stated that some level of hedging should be required and any hedging above that level should be voluntary. Enron argued that LDCs should be required to hedge so that consumers see reliable supplies at stable prices. The AG stated that LDCs have a responsibility to evaluate alternatives and not to simply rely on spot prices.

The third question asked how hedging should be accomplished, including what hedging mechanisms should be used and what percentage of the LDC's supply portfolio should be hedged. In answering this question and the previous question, the parties generally made the point that, since the LDCs' customer and load profiles differ, each LDC should tailor its own hedging program to its own specific circumstances. NCNG offered the most explicit comments, saying that an LDC should hedge somewhere between 10% and 50% of its supply portfolio for firm customers using a combination of hedging tools with both floors and caps. The AG stated that rate stability is one factor to consider in gas supply planning.

The Commission's fourth question asked who should bear the risks and costs. There was general agreement that the parties standing to benefit should bear the risks and costs. Frontier was the only party that suggested the Commission consider some sort of incentive plan, although the Public Staff alluded to the possibility of a "different allocation of risks and costs" but not until after the completion of a three-year pilot program. CUCA stated that it was opposed to any splitting of hedging-related savings or costs between the ratepayers and utilities.

The final question asked how the Commission should regulate and oversee hedging activities. To this question, the Commission got a hodgepodge of answers. Answers generally addressed the mechanisms of regulation and the regulatory philosophy which should guide the Commission's consideration of hedging issues.

With regard to the mechanism, the parties identified two needs. First, there is a need to establish hedging programs. Second, there is a need to review the results. Again, a number of parties contended that it was necessary for each LDC to establish its own program. Several parties suggested that the LDCs file or present hedging plans for Commission consideration with an evidentiary hearing being held only if such a proceeding was deemed necessary. Piedmont suggested that opportunity for public comment could be provided through presentation at a "regularly-scheduled Monday Agenda Conference." The Public Staff suggested filed comments. The AG suggested that hedging activity should be handled as a part of the annual gas cost prudency review, with the addition of monthly hedging activity reports. The Public Staff suggested that each LDC file a three-year pilot program for approval, with annual reviews and periodic reports and a comprehensive report at the end of the three-year period.

With regard to philosophy, there was general agreement that prudently incurred hedging costs should be recovered. The LDCs looked for preapproval of a hedging plan with an automatic assumption of prudency if the approved plan was followed. Prudency should be evaluated based on the situation at the time the decision to hedge was made.

DISCUSSION AND CONCLUSIONS

During the winter of 2000 - 2001, severe swings in the commodity price of natural gas were experienced. Parties commenting in this docket expressed the opinion that such commodity price volatility was likely to be common in the future. Enron wrote,". . . the price of natural gas has become increasingly volatile and will remain volatile for the foreseeable future." PSNC noted,". . . virtually all commodities exhibit price volatility, and recently natural gas has been among the most volatile." The AG commented, ". . . it has only been quite recently that consumer rates have reflected shocking increases due to reliance on spot prices." The Commission concludes that the parties generally agree that, in the future, it may be common to see the sort of the volatility in gas commodity prices that was seen last year.

Parties commented that hedging does not ensure low commodity gas prices, but rather mitigates price volatility. Hedging also involves risk and administrative expenses and, in the long run, will likely cost more than buying gas at spot market prices. NUI NC Gas stated, "Hedging is an insurance program to protect against unforeseen price changes and, as with all insurance, a premium must be paid . . . ." NUI NC Gas added, "It should be understood at the outset that over the long term any program to hedge prices will cost more than simply purchasing gas at prevailing market prices." Public Staff agreed, stating". . . the goal of a hedging program is achieving price stability and not necessarily reducing the cost of gas. . . ." Piedmont commented, "Although hedging may reduce the commodity price of gas for a particular customer for the period of the hedge, there is an equal likelihood that it will increase commodity prices for that same customer for the period of the hedge. In short, although hedging can reduce volatility in rates resulting from volatility in wholesale natural gas prices, there is a risk that this greater price stability may come at the expense of higher gas prices, at least for the period of the hedge." NCNG stated that, "It must be emphasized that hedging will not necessarily lower the LDC's price of natural gas and that the risks involved in managing natural gas supply for native load is not limited to volumetric shortages." Frontier referred to hedging as a "'zero-sum game' that is unlikely to reduce significantly the aggregate costs of natural gas." The Commission concludes that the purpose of hedging is to reduce the volatility of commodity gas costs. Furthermore, the Commission notes that hedging involves costs and risks and that it is possible that the long term cost of hedged gas will be higher than gas bought at market prices. The Commission understands that, with the use of hedging mechanisms, costs and risks are accepted in exchange for reduced volatility.

It is clear from the comments of the parties that no party to this docket opposes, in principle, the use of hedging to stabilize gas prices. CUCA indicated that it "supported, and had been supporting for a number of years, the adoption of hedging and any other appropriate risk management tools." NCNG stated, "The LDCs should be allowed to engage in hedging activities as an additional tool to help reduce the volatility of prices." The AG expressed support for "measures taken to stabilize rates and advocates that the Commission clarify that such measures should be part of a sound LDC gas purchasing plan." The Public Staff stated, "Unless an LDC demonstrates that hedging is not in the best interest of its customers, each LDC should implement a pilot hedging program." Some parties argued that hedging should be allowed at the LDC's discretion. PSNC wrote, "LDCs should be allowed an opportunity to hedge, but should not be required to do so."

NCNG commented, "Since an LDC does not stand to profit from any hedging decision, its only motivation for entering into any hedging transaction will be to mitigate gas price volatility for its customers. Such efforts should not be 'rewarded' by subjecting an LDC to a prudence review of its hedging decision." This Commission disagrees with the implication that simply because hedging does not increase NCNG's profit, the LDC has no motive--beyond altruism--to offer customers price stability. Toccoa made a very important point, stating that "The consumer, disenchanted with the cost of a particular form of energy, will look for options. . . ." Toccoa added,". . . and load lost to alternative forms of energy will result in fewer units/customers over which to spread a utility's fixed costs." The implication here is that, as the LDC loses load, it would seek to spread its costs over fewer units, therefore increasing the cost to the remaining customers. It should be obvious that it is beyond the power of this Commission to protect the LDC from market forces. The risk that customer discontent over price volatility could lead to load loss should provide motivation for a prudent LDC to assess and, if feasible, to implement a plan to mitigate commodity price volatility.

The Commission's Order Initiating Investigation and Requesting Comments sought to open a dialogue on how hedging could be accomplished by asking what hedging mechanisms could be used and what percentages of LDCs' supply portfolios should be hedged. The parties' comments in response made it very clear that, if LDCs hedge, because of the differences among LDCs, each individual LDC should develop its own hedging program. Differences in customer and load profile were major issues. PSNC comments included the statement that "Factors such as the nature of an LDC's customer mix, load characteristics and risk tolerance should be considered in determining how hedging should be accomplished . . . and, indeed, whether hedging is prudent at all." Frontier echoed PSNC's statement, stating that "different LDCs have different through-put and sales characteristics, which may fluctuate (depending upon weather and other demand variables) seasonally and over time. These characteristics may affect the timing and extent of hedging activities, and whether hedging is prudent at all." Toccoa's comments argued that how much supply an LDC chose to hedge, what hedging mechanisms should be used and even when to hedge depended on that LDC's market view and that market views could reasonably differ among LDCs. Piedmont commented that "Because each LDC has a different supply portfolio and customer mix, Piedmont does not believe a 'cookie-cutter' hedging program could work. . . ." Piedmont pointed out that storage". . . acts as a natural hedge against winter price volatility. The need to hedge may be directly related to the amount of storage available to an individual LDC." Enron echoed Piedmont's comments about the impact of the amount of storage capacity controlled by an LDC on price volatility. While the Public Staff and the AG did not elaborate on the differences among LDCs, both made statements that called for hedging as part of individual LDC gas purchasing programs in which the LDCs would assess or evaluate the need for hedging to avoid price volatility in their gas supply portfolio. Likewise, CUCA stated, "each LDC should be free to engage in the types of hedges with which it is most comfortable or believes are best suited to its particular system. . . ." The Commission agrees that each LDC faces a different situation in its market and concludes that it would not be appropriate to adopt a one-size-fits-all approach to hedging. Thus the Commission concludes that any hedging program adopted by an LDC should be specifically tailored to the circumstances faced by that LDC.

Several parties commented that the percentage of gas supply hedged and the exact hedging mechanisms used could and should vary among LDCs and among circumstances and that, under some conditions, it might not be appropriate for a certain LDC to engage in hedging at all. The Commission concurs.

There was general agreement among the parties that customers would benefit from hedging and should bear the costs and risks. The Commission notes that the parties representing customer interests that filed comments in this docket--CUCA, the Public Staff and the AG--all agreed that LDCs should be allowed to pass through prudently incurred hedging costs to customers. They all agreed that costs should be borne by the parties that stand to benefit from the LDC's hedging program. CUCA "acknowledged that the transaction costs should be recoverable by the utilities to the extent such costs are reasonable and prudent, and specifically that the costs should be recovered from sales customers, who are the beneficiaries of hedging." The Public Staff stated that the". . . risks and costs of hedging should be borne by the customers." The AG stated that the "... costs of hedging associated with a prudently evaluated and adopted plan should be allowed in the cost of gas paid by the consumers who derive the benefit of the hedging." The Commission concludes that it is appropriate for all hedging costs prudently incurred by an LDC for the benefit of sales customers to be passed through to sales customers.

LDCs have, in the past, been reluctant to hedge for fear that favorable results would be passed through to ratepayers, but unfavorable results would be deemed imprudent and would have to be absorbed by the LDCs. Piedmont stated that "the absence of any hindsight review or second guessing of hedging activities" was a necessary precondition for any LDC hedging program. Frontier also expressed concern over "20-20 hindsight" and stated plainly that without "protection from after-the-fact second guessing, LDCs could be caught in a Catch-22 dilemma: being punished (i.e. having gas costs disallowed) for hedging when they shouldn't have, or, alternatively, not hedging when they could." Toccoa commented, "In a volatile price environment, fixing natural gas costs is susceptible to after-the-fact second-guessing. We strongly encourage the Commission to steer clear of this path." NCNG had the strongest comments, asserting that it would be "virtually impossible" for an after-the-fact prudency review not to be". . . tainted by the ultimate result of the hedge." Enron put the point clearly, saying "widespread use of hedging instruments by natural gas distribution companies has not been observed to date due to the regulatory uncertainty associated with the timely approval and full recovery of the cost of gas supplies acquired at prices other than at market." In light of their concerns over backward-looking adverse regulatory treatment of hedging decisions, the LDCs have perceived the practice of buying all gas at the current spot market price to be the safest course of action.

The LDCs' fear of adverse regulatory treatment rests upon a misapprehension of North Carolina law. By law, this Commission is required to set rates that are fair to both the ratepayer and the LDC investor. G.S. 62-2(a)(1) declares that it is State policy, "To provide fair regulation of public utilities in the interest of the public." G.S. 62-133(a) makes clear that "In fixing the rates for any public utility subject to the provisions of this Chapter . . . the Commission shall fix such rates as shall be fair both to the public utilities and to the consumer." Furthermore, G.S. 62-133(b)(3)(4)&(5) and G.S. 62-133.4(c) make clear that the Commission must set rates that allow a utility, through sound management, to produce a fair return for its shareholders and allow for the recovery of reasonable operating costs and prudently incurred gas costs. As a result, the Commission must adopt a ratemaking treatment for hedging costs which is fair to all parties.

CUCA and the AG contended that the recovery of hedging costs should be handled under the purchased gas cost adjustment provisions in G.S. 62-133.4, including the annual prudency review required by G.S. 62-133.4(c). According to CUCA, "The Commission should review and assess the hedging activities of LDCs in the annual gas cost prudence review because such transaction costs are appropriately characterized as costs of natural gas supply." The Public Staff focused on discussing a proposed three-year pilot hedging program and did not explicitly address the question of what legal basis would underpin the recovery of hedging costs. The Public Staff did state, "It is assumed that any necessary rule changes and other details would be developed through reply comments or in response to additional direction from the Commission."

The LDCs also pointed to G.S. 62-133.4 and Commission Rule R1-17(k) in addressing the manner in which hedging costs should be recovered. However, they also argued that the Commission could and should pre-approve hedging plans and that all costs incurred within the parameters of such a plan should be conclusively considered to be prudently incurred. In its comments, Piedmont wrote, "In gas cost recovery proceedings under G.S. 62-133.4 and Commission Rule R1-17(k), all costs incurred by an LDC in conjunction with participation in a Commission-approved hedging program . . . should be deemed prudent and subject to full recovery." Frontier commented that G.S. 62-133.4(c)". . . directs the Commission to conduct annual review proceedings of each LDC's prudently incurred gas costs, and Commission Rule R1-17(k)(6) prescribes the procedures for these reviews. To the extent that hedging activities will and should affect the LDC's aggregate cost of gas, and the transaction costs of hedging should be considered a component of "Commodity And Other Charges" that are properly recoverable from sales customers, the annual prudency reviews are an appropriate time to evaluate the LDC's hedging transactions and adjust the LDC's gas costs accordingly. However, so long as the LDC stays within the parameters of its pre-approved mechanisms, it would not be punished in these proceedings for unanticipated movements in market price." PSNC stated that ". . . the cost of hedging should be treated as a part of the cost of gas." PSNC also stated that "The Commission has in place a procedure for reviewing the prudence of an LDC's gas purchases." It then referenced G.S. 62-133.4(c) and Commission Rule R1-17(k)(6), saying that they set "the mechanism for annually reviewing an LDC's prudent costs." PSNC added, "If hedging is undertaken in North Carolina, PSNC believes that the Commission should approve the objectives and parameters of each LDC's hedging program. Once that approved mechanism is in place, the annual prudence review is the appropriate forum in which to oversee hedging activities." Like the other LDCs, PSNC also". . . stresses that the evaluation of an LDC's hedging practices must be made in the context of the pre-approved mechanism or program . . ." and ". . . to the extent that the LDC demonstrates that it fully complied with the objectives and parameters of the pre-approved hedging program, then all costs associated with the program should be deemed prudent and subject to full recovery." NCNG argued that "As long as an LDC's hedging activities comply with the Commission's rules and guidelines, hedging costs should be automatically recoverable as gas costs and should not be subject to an after-the-fact prudence review." Toccoa echoed that comment, stating, "To the extent an LDC is operating within its hedging plan approved by the Commission, any hedging costs or gains should be deemed prudent and passed through to customers."

According to G.S. 62-133.4(e), the term "gas costs" "shall be defined by Commission rule or order and may include all costs related to the purchase and transportation of natural gas to the natural gas local distribution company's system." A question then is whether hedging costs fit within that definition. The Commission notes that G.S. 62-131(b) states that "Every public utility shall furnish adequate, efficient and reasonable service." To the extent that reasonable service by a gas utility includes providing a reasonably-priced supply of gas (within the limits of the LDC's ability to determine the commodity price of gas purchased), and to the extent that a reasonably-priced supply of gas is one that does not exhibit sharp swings in price, hedging costs are clearly costs "related" to the purchase of natural gas. The Public Staff stated, "Each LDC should assess the need for gas price volatility mitigation for its customers who do not presently have the ability to hedge." The Public Staff added,". . . the assessment should clearly distinguish gas price volatility mitigation from a general dissatisfaction with 'high prices.'" CUCA quoted Duke CEO Richard Priory as saying that "utilities have somewhat of a fiduciary obligation to protect their customers from price volatility." The AG's filing stated, "The Attorney General supports measures taken to stabilize rates, and advocates that the Commission clarify that such measures should be part of a sound LDC gas purchasing plan." The AG further commented,". . . LDCs have a responsibility to evaluate alternatives and not simply rely on spot indices" and". . . purchase decisions should be made based on considered analysis. Reliance on spot prices for most purchases may continue if expert analysis indicates that that is the prudent course of action, and otherwise other measures should be taken." The Commission concludes that the purpose of an LDC hedging program is to limit the volatility of gas costs incurred to permit the resale of gas to sales customers, a fact which establishes that hedging costs are properly viewed as gas costs. The Commission agrees with the parties that G.S. 62-133.4 and Commission Rule R1-17(k) provide the appropriate authority for reflecting costs associated with LDC hedging programs in customer rates.

Commission Rule R1-17(k)(2)(b) defines "gas costs" as "the total delivered cost of gas paid or to be paid to Suppliers," including a number of specified types of costs (such as commodity/gas charges, take-or-pay charges, take-and-pay charges, and service fees) and "any other similar charges in connection with the purchase, storage or transportation of gas for the LDC's system supply." A Supplier, according to Commission Rule R1-17(k)(2)(c) is "any person or entity . . . that locates, produces, purchases, sells, stores and/or transports natural gas for or on behalf of an LDC," including, but not limited to, producers, brokers, and marketers.

Since hedging costs would appear to be costs that were incurred in connection with the procurement of a reasonably-priced supply of gas used to meet system supply needs, these costs meet the definition of a gas cost set out in Commission Rule R1-17(k)(2)(b) so long as they were incurred in connection with a transaction with an entity that fell within the definition of a Supplier. To the extent that certain hedging mechanisms might be provided by parties that do not currently meet the definition of Suppliers in the Rule, it might be necessary to amend Rule R1-17(k)(2) before such hedging mechanisms could be considered as gas costs. The Commission solicits reply comments on what, if any, changes are needed to Rule R1-17(k)(2) in order to ensure that an appropriate range of hedging options is available to LDCs and recoverable in rates pursuant to G.S. 62-133.4 and Commission Rule R1-17(k).

After concluding that hedging costs can and should be treated as gas costs, the Commission notes that G.S. 62-133.4(c) requires an annual review of the prudency of the gas costs incurred by an LDC in the preceding twelve months. The statute requires that the Commission compare "the utility's prudently incurred costs with costs recovered from all the utility's customers that it served during the test period" in such an annual proceeding. Although LDCs argued that the Commission should pre-approve a hedging plan and that all costs incurred within the guidelines of that plan should be considered to be prudent, G.S. 62-133.4 provides for an analysis of the prudence of the utility's gas costs during the annual review proceeding. This analysis must be based on evidence and subject to participation of intervenors. This analysis must be made on the basis of the information available to the utility at the time its decision to hedge was made. Nothing in G.S. 62-133.4 in any way suggests that any other option is available to permit Commission scrutiny of LDC gas costs for reasonableness and prudence. The Commission concludes that pre-approval of a hedging plan is inconsistent with the procedures decreed by G.S. 62-133.4.

While the Commission cannot accept pre-approval, it acknowledges the LDCs' concern over the fairness of hindsight reviews. Several parties commented that the prudence of hedging decisions should be judged based on facts known at the time the hedging decision was made. NUI NC Gas stated that, "The prudence of actions taken and their costs should be judged based on the information available at the time the actions were taken, not based on hindsight." Frontier submitted similar comments, saying, "any regulation and oversight of . . . hedging . . . must be in light of the information known to the LDC at the time of the transaction, and without the benefit of the proverbial 20-20 hindsight at the time of the review." PSNC stated, "As is true of the evaluation of other gas purchases, the prudence of a hedging transaction must be judged in the context of the circumstances that existed when it was made, not on the basis of hindsight." The Commission emphatically agrees with those comments. The review of the prudency of hedging decisions, including both any hedging plan and any decision made during the implementation of such a plan, should be conducted on the basis of facts known at the time each decision to hedge (or not to hedge) was made and not on the basis of the outcome of the hedging decisions. The standard here is the same as the one articulated by the Commission in Docket No. G-21, Sub 393:

> The standard for determining the prudence of NCNG's decision to contract with Pine Needle for the needed storage capacity is that its decision must have been made in a reasonable manner and at an appropriate time on the basis of what was

> reasonably known or should have been known at that time. See Order in Docket No. E-2, Subs 537 and 333 dated August 5, 1988, 78th Report NCUC Orders and Decisions, 238, 251 (1988) citing *State ex rel. Utilities Commission v. General Telephone Co.*,, 281 N.C. 318, 345, 189 S.E.2d 705, 722 (1972). NCNG is not required to choose the least cost option when other considerations suggest that another decision is prudent and reasonable.

The comments in this docket did not yield much information that would help this Commission to set specific standards for hedging, if it was inclined to do so. In fact, to the extent that specific standards were mentioned, they seemed vague, arbitrary and articulated neither a goal nor clear support for the proposition that the standards proposed would actually accomplish such a goal. The AG stated that ". . . the question is whether and how LDCs should take steps to insulate ratepayers from commodity gas price volatility. The Attorney General supports measures taken to stabilize rates, and advocates that the Commission clarify that such measures should be part of a sound LDC gas purchasing plan." The AG further stated that ". . . rate stability is one of the factors to consider in gas planning." The Commission agrees with the AG, but also understands that such language fuels LDC fears of after-the-fact reviews and expressly reiterates its earlier statement that such review should not be conducted on the basis of hindsight.

Some parties proposed that a certain percentage of gas supply should be hedged. They did not define what they meant by such statements. Enron and NCNG both discussed some of the different mechanisms that can be used to hedge. But parties suggesting that a percentage of supply be hedged did not specify what hedging tool they were planning to use, even though the use of different tools would yield significantly different costs, risks and results. Nor did they discuss such details as target prices. For example, NCNG, after stating that LDCs should "be allowed to engage in hedging activities as an additional tool to help reduce the volatility of prices," proposed that "The hedged percentage of a LDC's supply portfolio for residential and small commercial firm customers should be in the range of 10% to 50%. A reasonable hedging strategy would include a combination of fixed-price forwards, options and futures." In fairness to NCNG and the other parties, the Commission notes that the Order Initiating Docket raised the issue of what percentage of supply should be hedged. However, stating a percentage--or a range-- to be hedged without articulating why that percentage or range is appropriate adds little.

Other comments suggested that hedging the price of some portion of system supply could still leave the customer with significant exposure to higher bills. Heat-sensitive customers can see upward swings in their total bill that are caused not only by a commodity price increase, but also by an increase in gas consumption due to unseasonably cold weather. Piedmont raised that point, stating that "no price hedging program will eliminate fluctuations in gas bills due to temperature variations during a heating season." Enron noted that "There are also various hedging products to mitigate the risks and exposure of weather to the utility and its customer." The comments by Piedmont and Enron point out need to consider volume as well as price. More generally, they point out the danger of arbitrary Commission standards.

The comments received not only failed to establish useful specific standards, but other than enunciating the general goal of reducing price volatility or promoting rate stability, they did not clearly answer the question of how hedging should be undertaken. While not clear and definitive, some further comments in the docket did shed some light on this issue. The common thread in these comments is that the LDCs should look to the market and not to the Utilities Commission for guidance.

The AG commented that "it has only been quite recently that consumers' rates have reflected shocking increases due to reliance on spot indices." It is a well-established principle of ratemaking that a sudden, severe increase in rates--"rate shock"--should be avoided. While the concept of rate shock is frequently applied to the shifting of costs among customer rate classes in a general rate case, *State ex rel. Utilities Commission v. Carolina Utility Customers Association, Inc.*, 323 N.C. 238, 372 S.E. 2d 692 (1988), the Commission notes that, to the ratepayer paying a monthly bill, it makes little difference whether the bill has soared because of a re-allocation of fixed costs in a general rate case or because rapidly increasing commodity gas costs are being passed through in a purchased gas adjustment proceeding. The avoidance of rate shock is one obvious goal of hedging. That is still not a specific target, but does begin to provide some guidance.

The Commission does not by any means equate proper gas pricing with unchanging rates. Enron stated, "Pricing mechanisms that hide the true cost to the end-user or defer the impact of cost increases do not send the appropriate price signal to end-user customers and will not result in the most efficient and responsible use of the natural gas commodity." The Commission agrees. But, Enron goes on to say, "Hedging can help distribution companies achieve price stability, while at the same time, reflect the true cost of securing its customers' gas supply requirements." This argument strikes the Commission as inconsistent. The whole purpose of hedging is to shield the customer from the cost of gas supply procured on the spot market when that cost is rising sharply. While regulatory pricing mechanisms (such as the use of a benchmark commodity gas cost embedded in rates) may send distorted price signals, eventually the customer pays the true cost. Hedging mechanisms shift price risk to arbitragers or producers and leave the consumer with relatively little price response to market conditions and therefore are also delivering distorted price signals. If gas is in short supply and the market price soars, passing higher prices through to the customer is an effective way to signal the consumer to consume less gas. From these comments, it can be concluded that a hedging program should allow gas prices--as part of a total gas bill--to send reasonable price signals without subjecting the ratepayers to rate shock. Many of the parties suggested that some portion, but not all, of the LDC's supply portfolio might appropriately be hedged. The Commission notes that such an approach would be consistent with maintaining price signals while avoiding rate shock.

Piedmont stated that "Piedmont believes that any hedging decision should be voluntary on the part of each individual customer. In a perfect world, Piedmont believes each natural gas customer should make his or her own decision as to whether to reduce price volatility through hedging and to take the associated risks or rewards of a hedging decision." It acknowledged that it would be difficult and expensive to administer a "fixed-price option program" for individual residential and small commercial customers but stated that it was exploring the feasibility of developing such a program. Piedmont's point on the desirability of offering customer choice, if feasible, is well taken. Not all customers would want an LDC hedging on their behalf.

There were a number of comments dealing with whether hedging service should be offered to large industrial and commercial customers and, if such service were made available, what special factors should be considered. CUCA, referring to its comments during the April 9, 2000 informal meeting, stated, "Dramatic swings in commodity prices obviously can cause a substantial increase in the monthly and annual cost of gas service, which can undermine the budgeting process and can bring significant adverse consequences. CUCA argued that such swings can be severe enough to necessitate reductions in production and employment by industrial customers." It is clearly not in the best interest of the LDC, its other customers, or the State to have factories closing down shifts and people being put out of work. A question remains as to whether a transportation customer with the ability to hedge its own supply should be offered LDC hedging service. The Public Staff commented that ". . . since large industrial customers that have transportation service as an option are able to hedge," the LDC's efforts to provide customers hedging ". . . should be confined to customers who cannot transport. . . ." However, the LDC and its remaining customers can be hurt by the loss of an industrial customer.

Prudency dictates not only what an LDC should do, but also what it should not do. Frontier commented, "So long as large industrial customers with alternative fuel capabilities are able to switch on and off the system, and/or between sales and transportation tariffs, each month, they can game the system by switching to sales service when hedging results in price reductions compared to market prices and back to transportation service (or off the system altogether to alternate fuels) when it does not." While CUCA acknowledged that hedging services should be offered to sales customers (and not those using the transportation tariffs), it does not directly address the issue of switching in this docket. Different North Carolina LDCs now have different policies addressing the ability of transportation customers to move from a sales rate to a transportation rate. Still, there remain LDCs whose transportation customers can switch in a relatively short period. It might well not be prudent for LDCs to offer hedging services to customers who can enjoy the benefits if the market turns in a way that makes the hedge valuable, and slough off the costs if the hedge turns out to be "wrong." An LDC should carefully consider the extent to which hedging should be limited to customer classes that lack other hedging opportunities or whether hedging should be offered to all customer classes.

Attached to and included with the AG's comments was an order on hedging issued by the New York Public Service Commission that raised an issue regarding the impact of hedging on the LDC's competitive position. The order stated that New York LDCs raised the point that "... using a number of relatively independent pricing mechanisms may leave an LDC at a price disadvantage against competition should prices drop."

While the statement above refers to an LDC, the same could be said for a business. Locking in commodity prices is a business decision. A business that hedges when gas prices move up the way they did last year will have a competitive advantage over a competitor that didn't hedge. Conversely, a business that hedges when commodity prices drop will be at a competitive disadvantage. An LDC industrial sales tariff that imposes hedging not only takes an important business decision out of the customer's hands, but also produces a risk associated with a wrong guess. If an LDC offers hedging to industrial customers and a customer elects to have the LDC hedge, there must be reasonable assurance that the LDC can collect its money if the market turns the wrong way. If a customer's hedging decision puts it at a competitive disadvantage, it is reasonable to assume that there is at least some chance that that customer will go out of business, leaving the LDC with a hedging loss. As a result, to the extent that a customer wants LDC hedging service, but imposes undue costs and risks, the LDC should not offer such service.

The common thread in many of the comments received in this docket is the importance of the market in planning a hedging program. The AG and Public Staff stated that each LDC should assess or evaluate the need for hedging to avoid price volatility in their gas supply portfolio. The individual LDC--and not this Commission--is in a position to assess and evaluate the needs of its customers and to determine to what extent they want to avoid price volatility. Unchanging rates are not necessarily a good thing, since they mask market pricing signals. The avoidance of rate shock is a clear goal. Beyond that, the LDCs should look to their customers to determine the specifics of their hedging programs. They should look to their customer mix and to the access of their customers to hedging tools on the open market. They should consider the desirability of letting their customers make their own hedging choices, if practical. They should consider the risks of hedging and understand that they are not obligated to take on excessive risks to meet customers' needs. And, as Toccoa pointed out, the LDCs must understand that they face a very real market risk. They should be aware that if they fail to meet their customers' needs, they face the risk of losing both load and customers and end up having to spread their fixed costs over a declining customer base.

In summary, the Commission concludes that hedging is an option that must be considered in connection with an LDC's gas purchasing practices. An LDC's decision to make no effort to mitigate price spikes--including a decision not to hedge--would be a decision subject to review in the LDC's annual gas cost prudency review proceeding just as much as a decision to hedge. The Commission further concludes that LDCs should address their hedging policy in their testimony in each prudency review, explaining why and how they hedged or why they didn't hedge during the test period.

The Commission concludes that, if an LDC decides to hedge in some fashion, prudently incurred costs in connection with hedging should be treated as gas costs under G.S. 62-133.4 (as discussed in this Order, Commission Rule R1-17(k)(2) might have to be amended to allow costs incurred under certain forms of hedging to qualify as gas costs). While such costs cannot be pre-approved within the context of the annual gas cost prudency review, the Commission recognizes that the review of the prudency of a decision to hedge or not to hedge should be made on the basis of the information available at the time each decision is made, not on the basis of the information available at the time of the prudency review proceeding.

To facilitate the consideration of hedging in future annual gas cost prudency reviews, the Commission requests that the parties to this docket comment further on (1) specifically, what costs should be considered hedging costs; (2) whether, and if so what, changes are needed in Commission Rule R1-17(k)(2) for purposes of the prudency review proceedings and; (3) what reporting requirements are needed.

IT IS, THEREFORE, ORDERED as follows:

1. That each LDC should address its current hedging policy and program in its testimony in each annual gas cost prudency review, explaining why and how it hedged or why it didn't hedge during the test period, beginning with testimony filed after the issuance of this Order.

2. That the Chief Clerk shall send copies of this order to all persons on the Commission's natural gas mailing list;

3. That parties wishing to comment on the three questions above should submit comments no later than March 27, 2002, and reply comments by no later than April 11, 2002.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of February, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

WG022502.01

Commissioner Owens dissents.
Commissioner Wilkins did not participate.

DOCKET NO. G-100, Sub 84

COMMISSIONER OWENS, dissenting.

If it looks likes a fish, smells like a fish, it must be a fish.

I question why we are getting into market structure. Who benefits from hedging - the company or the consumer? I'm not satisfied that I can discern this issue by voting with the majority so therefore I find myself a minority vote.

\s\ Robert V. Owens, Jr.
Commissioner Robert V. Owens, Jr.

DOCKET NO. P-100, SUB 58a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Verizon South, Inc.'s Petition for Confidential) ORDER RULING ON
Treatment of Verizon's Monthly Access Line) CONFIDENTIALITY OF MONTHLY
Reports) ACCESS LINE REPORTS

BY THE COMMISSION: On April 8, 2002, Verizon South, Inc. (Verizon) filed a Petition for Confidential Treatment of its Monthly Access Line Reports. Verizon requested that the Commission enter a protective order and issue a ruling that Verizon's Monthly Access Line Reports should be treated as confidential. In a March 13, 2002, letter to the Public Staff, Verizon stated that it does not object to the public disclosure of aggregate access line data (i.e., total access lines for the State) but desired that wire center specific information and wire center specific switching data not be disclosed publicly.

This controversy arose out of the submission by Verizon of its monthly Telephone Development Report to the Public Staff, which includes, among other things, information on Verizon's access line totals by exchange; line gain or loss by exchange; a further breakdown of access line information by wire center; and information about switch types by wire center. More specifically, the Report provides retail access line totals for 32 exchanges in North Carolina and includes a breakdown for each area among business lines and residential lines (with separate counts for one party, two parties, and four of more parties); data regarding the number of retail local exchange customers by exchange, broken down by business and residential customers; and information about Verizon's switching equipment by exchange. The access line totals in the Reports contain both retail and wholesale (that is, resold) lines.

Verizon has submitted these Reports since 1982. On March 13, 2002, Verizon asked the Public Staff not to disclose the Report's wire-center specific information outside the Commission without Verizon's consent. On March 20, 2002, the Public Staff advised Verizon that the Commission, not the Public Staff, would need to decide whether the Verizon Reports should be accorded confidential treatment. The Public Staff believes that this information should be public.

Verizon argued that the information contained in its Report is considered confidential by both Verizon and the competitive local providers (CLPs), whose line counts are included in Verizon's Reports. It is a trade secret under G.S. 66-152(3) and G.S. 132-1.2 and is thus excepted from the Public Records Act because it has "actual or potential commercial value from not being generally known" and "is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Verizon cited to State ex rel. Commission v. MCI Telecommunications Corp., 132 N.C. App. 625, 514 S.E.2d 276 (1999) (MCI) where the North Carolina Court of Appeals held that CLP Access Line Reports filed under Commission Rule R17-2(k) would, if publicly disclosed, cause competitive harm to the CLP submitting the Report.

According to Verizon, both the CLPs and Verizon would be disadvantaged by release of this information. A new entrant, for example, could reliably estimate how many lines a CLP who is a principal competitor of Verizon's has by subtracting Verizon's retail lines from the total. In addition, because CLPs consider their line counts to be confidential, Verizon is required to protect this confidential information under the terms of its interconnection agreements. Verizon would be disadvantaged by disclosure because it would allow its competitors to tailor their entry and marketing strategies better than they otherwise could. Although Verizon has traditionally filed this information publicly, the telecommunications landscape has changed radically in the past 20 years. Public disclosure of geographically disaggregated market data would unfairly disadvantage both Verizon and the CLPs. Verizon did, however, have no objection to public disclosure of aggregate access line data (i.e., total access lines for the State) but requested that wire center specific information and wire center specific switching data not be disclosed outside the Commission without Verizon's prior written consent.

The general policy of the State is that information filed with the State constitutes public records to be available to the public. See, generally, G.S. 132-1 et seq. However, an exception is provided under G.S. 132-1.2 for information which is a "trade secret," one of the provisions of which is that the information must be the property of a private "person" as defined by G.S. 66-152(2). G.S. 66-152(3) defines a trade secret as "business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that: a.[d]erives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and b. [i]s the subject of efforts that are reasonable under the circumstances to maintains its secrecy." In MCI, the Court of Appeals cited the following factors for consideration in determining whether information is a trade secret, as originally set out in Wilmington Star-News v. New Hanover Regional Medical Center, 125 N.C. App. 174, 480 S.E. 2d 53, appeal dismissed, 346 N.C. 557, 488 S.E.2d 826 (1997) (Wilmington Star-News):

(1) the extent to which the information is known outside the business;
(2) the extent to which it is known to employees and others involved in the business;
(3) the extent of measures taken to guard secrecy of the information;
(4) the value of the information to business and its competitors;
(5) the amount of effort or money expended in developing the information; and
(6) the ease or difficulty with which the information could properly be acquired and duplicated by others.

Comments

The Alliance of North Carolina Independent Telephone Companies (Alliance) supported Verizon's request that its Monthly Access Line Reports be deemed confidential. The Alliance cited to competitive conditions, which make such information commercially valuable to competitors, and argued that confidentiality would not hinder the Commission's or Public Staff's regulatory duties, because the regulatory bodies would continue to have access to the information. The Alliance also cited to the MCI case where the Court of Appeals noted that "public access to this [non-public] information would provide competitors with rather extensive insight into the business plans and operations of a particular CLP, information that would not otherwise be available generally." The same considerations apply here.

Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, Carolina) supported Verizon's request concerning confidentiality, citing competitive considerations.

Time Warner Telecom of North Carolina, LP (Time Warner) viewed the MCI case as dispositive in favor of confidentiality and noted that, to the extent that the Reports in issue either disclose directly or indirectly Time Warner's access line information, it would object to the release of that information. Verizon's interconnection agreements require it to respect and protect the CLPs' proprietary information.

Public Staff reiterated its view that the Reports should remain public and argued that these Reports were distinguishable from those filed by the CLPs, which the Court of Appeals found to be protected in MCI. The Public Staff noted that the ILEC Monthly Reports have been filed for over thirty years, and for more than five years since the advent of local competition, while the CLPs asserted their right to file their Reports under seal almost immediately after the filing requirement was imposed. Specifically, with reference to the six factors originally set out in Wilmington Star-News, the Public Staff stated that, with respect to the first three factors, the information in the Reports is widely known inside and outside the business and no measures were taken to guard its secrecy. With respect to the fourth factor, the business value of the information, the Public Staff maintained that the Reports were valuable not only to the regulatory agencies but to the public. For example, the number of access lines in a given exchange might be useful to Internet service providers (ISPs) in seeking out customers. Moreover, the Public Staff maintained that the Reports do not have any great business value to Verizon from a competitive standpoint because it is able to compete successfully at the present time, even though competitors have access to its Reports. The Public Staff denied that a competitor to Verizon could infer useful information, as Verizon suggests in its example, because the Reports do not provide a delineation between retail lines and services and total Verizon lines and services, either on an individual exchange basis or on an aggregate basis. With respect to the fifth factor, the Public Staff admitted that there was some cost but it is trivial. With respect to the sixth factor, the Public Staff conceded that the Reports could only be produced by Verizon. Accordingly, the Public Staff argued that all the factors, but the last, on balance suggest that the Reports should remain public.

As an aside, the Public Staff noted that in the course of this proceeding it was advised by Verizon that the Access Line Reports include not only retail lines but also access lines provided by Verizon to the CLPs for resale. The Public Staff was not aware of this, and does not believe that it is consistent with the practice of other ILECs or the Commission's intent. The Public Staff therefore requested that the Commission instruct Verizon to include only retail lines in its access line Reports.

Attorney General argued that the Access Line Reports do not constitute trade secrets because the Reports does not provide insight into Verizon's business plans. As an ILEC, Verizon is the carrier of last resort and it does not have a business plan or strategy for entering its own market. This is what distinguishes these Reports from those of the CLPs. Verizon's Reports do not allow competitors to discover any affirmative plans or competitive strategies employed by Verizon. The Attorney General also denied that Verizon is a private person; it is a public utility. When determining whether a party is a private person under G.S. 132-1.2(b) and G.S. 66-152(2), the nature of the relationship between the corporation and the government is controlling. In MCI, the Court of Appeals held that CLPs were private persons because they not regulated by the Commission in a comprehensive manner. Verizon is so regulated. Lastly, the Attorney General urged that the Access Line Reports do not qualify as trade secrets because Verizon has not taken reasonable efforts under the circumstances to preserve their secrecy, having filed these Reports as public documents for many years.

Verizon Reply Comments

Verizon stated that it did not wish to keep the access line information absolutely secret but, rather, confidential, accessible to the Commission and to parties who have entered into a protective agreement. Verizon argued that the Attorney General and Public Staff had ignored Verizon's arguments that it was seeking to prevent competitors from gaining access to the business plans or competitive strategies of both Verizon and its wholesale customers. The MCI case indicates that the relevant inquiry is whether the disclosure of information would allow competitors to discover how a provider serves its customers, its plans for entering the local market, and the areas it would focus on. While the Attorney General concedes that, if Verizon were a CLP, its Reports should be treated as confidential, it exalts form over substance with respect to Verizon. The Court in MCI focused on the nature of the information, not the nature of the entity seeking protection. With respect to the Attorney General's argument that Verizon is not a "private person," Verizon argued that it is clear that Verizon exercises independent authority over its business operations as a privately-owned company. Verizon likewise rejected the argument that it should be barred from asserting confidentiality at this time because it has not done so in the past. Such a view would prevent a party from ever seeking confidential treatment of information on a going-forward basis if it had ever provided the information publicly. The telecommunications market has changed radically since 1982 and what was appropriate for public filing by a legal monopoly is no longer true for one engaged in competition. As for the Public Staff's argument that the information is useful to the Commission, Public Staff, and the public at large (such as ISPs), Verizon observed that the regulatory bodies still would have access to the information, and no ISP has commented in this docket and no CLP has opposed Verizon's motion. A party with legitimate need for the information can obtain it subject to a protective order.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, and with great reluctance, the Commission concludes that Verizon's January Monthly Access Line Report, as well as all future Monthly Access Line

Reports, should be protected from public disclosure by the Commission and Public Staff as long as Verizon appropriately asserts a claim of confidentiality when filed, except as to aggregate information in the Reports as to the State as a whole. Verizon shall, along with confidential Monthly Access Line Reports, file such aggregate information in a separate document which will be publicly available. Furthermore, as per the Public Staff's suggestion, Verizon should henceforth provide only retail lines in its Monthly Access Line Reports.

The primary reason for our decision is that we consider the MCI decision to be largely dispositive of the instant case. While the MCI case dealt with CLP access lines, its logic applies with equal force to ILECs. Verizon has demonstrated that the access line information in question is information that derives commercial value from not being generally known and which cannot be readily inferred and which has been subject to reasonable efforts to keep its secrecy. Both Verizon and the CLPs wish this information to remain private.

The Public Staff cited to the six factors propounded by the Court of Appeals in the Wilmington Star-News case. Interestingly, in MCI, while noting the six factors, the Court of Appeals there did not discuss them in detail except to conclude that the CLP access line information constituted a "trade secret." The primary analytical flaw of the Public Staff and Attorney General in resisting Verizon's confidentiality claim is not to take into account that market conditions change. If Verizon were still a monopoly local service provider, then there would be no question that the access line information should be public. But this is no longer the case. While obviously an important player in its franchise area, Verizon is one among a number of players, and it has a legitimate interest in maintaining the confidentiality of the access line information. That Verizon has not previously asserted confidentiality is not a bar to a valid claim for it at this time. This would lead to the unreasonable result that an ILEC could never claim that hitherto public information should be confidential even if the market environment had radically changed.

In light of these considerations, a brief examination of the six factors follows. Of course, at this point in time, similar information is known outside the business because that information has hitherto been filed as public; but this will not be true with Reports in the future as they are filed confidentially. The same applies to the extent to which the information is known to employees and others. Verizon has taken appropriate measures under the law to guard the secrecy of the new information once it has asserted its claim for confidentiality. The information has commercial value to the business and its competitors and, while the amount of money it expended on developing the information may be relatively small for a company the size of Verizon, it nevertheless constitutes a monetary expenditure; in this context, the amount spent is irrelevant. The Public Staff has conceded the last factor.

Finally, the Commission does not believe that the Attorney General's argument that Verizon is not a private person has merit. Verizon has pointed out that it exercises independent authority over its business operations and is a privately-owned company in a competitive market. While the Commission regulates Verizon more than it regulates CLPs, with the advent of competition and the price plans, it regulates Verizon rather less comprehensively than before. It does not "overshadow" the Company. On a continuum, the Commission is far less involved in Verizon's business than was, say, Wake County in that of the Wake County Hospital System, Inc., which is the leading case on the matter. See, The News and Observer Publishing Company, Inc. v. Wake County Hospital System, Inc, 55 N.C. App. 1 (1981). To say that Verizon is not a private person would be the same as saying that no ILEC is a private person for the purposes of confidentiality, and nothing that an ILEC files can be confidential. Such an argument cannot be sustained.

IT IS, THEREFORE, ORDERED as follows:

1. That Verizon's January Monthly Access Line Report and its future Monthly Access Line Reports shall be accepted as confidential, provided that Verizon appropriately asserts such confidentiality when such Reports are filed.

2. That Verizon shall, at the same time it files future Monthly Access Line Reports, file a report with aggregate information pertaining to the State as a whole which shall be a public document.

3. That Verizon shall henceforth provide only retail line information in its Monthly Access Line Reports.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of June, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

pb061002.03

Commissioner James Y. Kerr, II, concurs.
Commissioners Robert V. Owens, Jr. and Lorinzo L. Joyner dissent.
Commissioner Sam J. Ervin, IV did not participate.

DOCKET NO. P-100, SUB 58a

COMMISSIONER JAMES Y. KERR, II, CONCURRING: I concur in the result reached by the majority but do so without any reluctance whatsoever; it represents both the correct application of the law and a sound practical result.

\s\ James Y. Kerr, II
Commissioner James Y. Kerr, II

DOCKET NO. P-100, SUB 72a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Flow-Through Obligations of Interexchange	)	ORDER ON FLOW-THROUGH
Carriers	)	COMPLIANCE

BY THE COMMISSION: The Commission on July 8, 2002, issued an Order requesting comments on the Average Rate Per Minute Decline (ARPM) methodology on access rate reductions, establishing the compliance date for access rate reductions, establishing a generic docket dealing with flow-through items, and approving WorldCom tariffs which complied with Commission flow-through directives. On August 16, 2002, a Motion for Reconsideration and Request for Stay was filed with the Commission by Sprint Communications Company, L.P., Qwest Communications Corporation, MCI WORLDCOM Network Services, Inc., and MCI WORLDCOM Communications, Inc. (collectively, "Petitioners").

On August 27, 2002, the Commission issued an Order requesting comments by parties other than the Petitioners no later that September 12, 2002, and reply comments by parties no later than September 24, 2002. Additionally, the Commission stayed the September 3 and 24, 2002, dates related to the generic proceeding, and also, the September 9, 2002, compliance filing date.

BACKGROUND

The Petitioners in their August 16, 2002, filing stated that their Motion was made for consideration by the entire seven-member panel of the Commission. The Petitioners commented that based on the reasons cited in their Motion, there appeared to be significant and important questions concerning the state of competition in the long distance market in North Carolina, conflicts between decisions of the Commission, and the boundaries of jurisdiction of the Commission. The Petitioners presented the following points for their Motion:

1. The Petitioners asked the Commission to reconsider as a minimum that portion of the Order that denies an evidentiary hearing as regards to the flow-throughs submitted in February 2002.

2. The Petitioners stated that, the Public Staff identified various problems with the IXCs' methodologies which were contested by the IXCs, and therefore, an evidentiary hearing is needed to resolve disputed facts:

a. As stated by the Petitioners, the Public Staff maintained that there is a direct linkage between access charge reductions and changes in long distance rates when Commission compelled reductions are made on tariffed products. IXCs contend that there are additional factors, in addition to rate reductions in response to ILEC actions, such as changes in demand and productivity activities by the IXCs which impact rates. Thus, the IXCs commented that there is no direct linkage between access charge reductions in a particular jurisdiction and reductions in long distance rates.

b. The Petitioners stated that the reason behind a rate reduction may be an IXC initiative, which may be greater than ordered access charge reductions, or the result of a Commission action. The net result is lower prices to consumers.

c. As stated by the Petitioners, the Public Staff argued that the ARPM calculation simply determines the average revenue per minute, not whether customers have actually received reductions or, if rates were actually reduced or, if the reductions were the results of changes in the access charges. The Petitioners counter that the Public Staff does not understand that customers migrate to different and lower cost products and may also change calling patterns, which in combination impact the ARPM. The Public Staff commented that the ARPM is a gross simplification of access reductions, as stated by the Petitioners.

d. The Petitioners commented that the Artificial Flow-Through Constraint assumes a static and non-competitive market; whereas, the ARPM mirrors the competitive market because it shows all forms of price reduction.

e. As stated by the Petitioners, the Public Staff implied that ARPM as approved in several other jurisdictions does not permit credit for changes in the average rate per minute before the access charge reduction became effective.

f. The Petitioners stated that the Public Staff maintains that Sprint, Qwest and WorldCom have not implemented access charge reductions, and furthermore, the method which they submitted to the Public Staff did not utilize the Commission approved methodology.

3. The Petitioners state that the Commission appeared to accept the Public Staff belief that other IXCs would be disadvantaged if it accepted the petitioning IXCs' methodology. The Petitioners stated that as a result of relying on the Public Staff's argument, the Commission's Order does not analyze whether the flow-through reductions filed were in fact compliant.

4. The Petitioners stated that in the Order's Conclusions, the Commission did not disagree that there are facts in dispute, but that the Commission rejected an evidentiary hearing "due to the turmoil" within the Industry:

a. The Petitioners stated that the Commission's comments support the fact that the market for long distance services is sufficiently competitive, and therefore, there is no need to compel flow-throughs, in particular the "Artificial Flow-Through Constraint;"

b. The Petitioners pointed to BellSouth's long distance petition and WorldCom's bankruptcy filing as indicators of rapid market changes and risks faced by IXC service providers; and,

c. The Petitioners commented that since the market for long distance services is "subject to change without notice", it follows that an evidentiary hearing should be granted by the Commission.

5. As stated by the Petitioners, each of the Petitioners have demonstrated flow-throughs with different combinations of reductions of previously tariffed products, ARPM and the filing of new products with lowered rates.

6. The Petitioners stated that one evidentiary hearing represented judicial economy, and that flow-through requirements dating from November 1, 2001, as well as future obligations deemed a hearing to be in the best interest of consumers.

7. The Petitioners stated that the issue is whether the Commission would require "line-item" reductions given that it has taken a "hands off" policy on regulating long distance rates. Furthermore, the Petitioners commented that the Commission's decisions deregulating the long distance market runs counter to line-item reductions as proposed by the Public Staff.

8. As stated by the Petitioners, Qwest commented that there are nearly 400 certified IXCs appearing on the Commission's website and that, with the exception of access flow-through requirements, the Commission does not otherwise regulate long distance rates. The Petitioners argued that since the Commission has not acted on regulating long distance rates, then it may be assuming jurisdiction to compel flow-throughs, especially without an evidentiary hearing.

9. The Petitioners stated that, pending resolution of this Motion, the petitioning Parties request that the Commission stay the compliance filing which was to be submitted by September 9, 2002.

10. Lastly, the Petitioners stated that with rates lower now than under monopoly market conditions, it is appropriate to consider whether access reductions should be achieved on a dollar-for-dollar line-item basis on current and prospective access reductions.

COMMENTS

PUBLIC STAFF: On September 12, 2002, the Public Staff commented that, the Petitioners sought reconsideration and a stay of the Commission's July 8, 2002 Order and an evidentiary hearing on whether their February 2002 flow-through filings are appropriate and the appropriate methodology for future flow-through requirements. The Public Staff opposed the request in its entirety.

According to the Public Staff, the alleged dispute is whether the Public Staff's criticism of the ARPM and its advocacy of regulatory intervention to realized access charge reductions is reasonable. The Public Staff stated that the undisputed fact is that the February 2002 filings of the Petitioners are not in compliance with existing flow-through obligations.

The Public Staff stated that if the nonfactual and policy disputes can not be resolved through the receipt of comments, then the Commission can schedule a hearing if necessary. The Public Staff commented that it would participate in discussions concerning the degree of competition in the long distance market, but only after all IXCs are compliant with existing flow-through obligations.

The Public Staff stated that the Petitioners have not flowed-through all of the access charge reductions that have been implemented by the ILECs, as required by the Commission. As stated by the Public Staff, since June 24, 1999, ILECs have made a total of 15 access charge reductions for which IXCs were required to submit flow-through filings. Further, the Public Staff stated that none of the Petitioners have filed compliant tariffs in all 15 filings. Furthermore, other facilities-based IXCs have an equally poor record, although a few are in compliance with the BellSouth June 24, 2002, access charge reduction.

The Public Staff stated that the Commission should require all facilities-based IXCs to be in compliance with existing access charge reduction obligations before considering whether to allow the market to ensure that consumers realize the full benefit of access charge reductions in the future.

AT&T: On September 4, 2002, AT&T commented that it seeks reconsideration on that portion of the Order addressing the appropriateness prospectively of the ARPM, and further, whether any regulatory flow-through methodology is appropriate given present marketplace conditions. AT&T stated that the long distance market began to rapidly transform itself after the Telecommunications Act of 1996. AT&T commented that the combination of internet traffic, e-mails as a substitute for long distance calling, and a number of carriers such as Williams Communications, Level 3 Communications, and others providing unlimited capacity with state-of-the-art fiber optic networks have driven rates down in recent years.

AT&T stated that access minutes declined in North Carolina by 9% between 2000 and 2001, reflecting a fundamental shift in consumer demand from traditional long distance to alternative forms of long distance communication. Additionally, wireless usage has increased each year since 1997, which is thought to provide some level of substitution to traditional long distance service. Also, AT&T stated that wireless pricing has fundamentally altered the telecommunications industry and has also impacted the pricing of services in the wireline long distance market as well. Furthermore, AT&T commented that just as pricing has attracted long distance usage, a similar pricing strategy is emerging in the wireline services market with the introduction of "all distance bundles" that combine local and long distance service into a single product. Furthermore, AT&T stated that the Commission should expect the popularity of "all distance bundles" to grow, as carriers use UNE-Platform offerings to provide "all distance bundles" in competition with the ILECs.

In further discussion of the competitive issues facing IXCs, AT&T stated that the Commission should not underestimate the powerful consequences as ILECs begin offering long distance services. AT&T opined that there is no question that an ILEC that is positioned to offer local and long distance services enjoys a substantial advantage over the stand-alone IXC. As an example, AT&T pointed out where BellSouth stated that they anticipate to quickly capture 25 to 30 percent of their market share, based on gaining 271 approvals.

AT&T stated that wireless all distance bundles and the ILEC entry into long distance services represent the most prominent changes taking place in the long distance market. Also, the emergence of prepaid services and IP telephony will further impact the mix of telecommunications services and market shares in the future. AT&T stated that, competitive changes "occur without notice", and therefore, a policy of regulation based on line-item, dollar-for-dollar flow-through access rate reduction is inappropriate and ignores the dynamic nature of the present competitive marketplace. AT&T concludes by stating that, "now is the time for this Commission to not only review, but also firmly reject, a regulatory flow-through system."

REPLY COMMENTS

On September 24, 2002, the following parties filed reply comments with the Commission:

AT&T: AT&T stated that, although the Public Staff disputes recent AT&T work papers on flow-through obligations, it has complied with all flow-through reductions, and requested the Commission to approve its present flow-through work papers, and also the respective tariffs on this issue.

QWEST COMMUNICATIONS CORPORATION (QWEST), MCI WORLDCOM NETWORK SERVICES, INC., AND MCI WORLDCOM COMMUNICATIONS, INC. (COLLECTIVELY MCI WORLDCOM): Qwest and WorldCom stated that they understood Petitioners to say that the Commission should reconsider dollar-for-dollar flow-through reductions from November 2001 to present, and also the rejection of the ARPM method to demonstrate flow-through compliance. Only one IXC – AT&T filed comments. Qwest and MCI WorldCom noted that AT&T argued that the Commission should go further and request comments as to whether any regulatory oversight was needed to effectuate flow- through reductions in a competitive marketplace. They noted that, while AT&T did not advocate using the ARPM, neither did it oppose the Petitioners request for reconsideration. Qwest and MCI WorldCom stated that IXCs have supported using the ARPM or remained neutral on its application, and therefore requested that the Commission approve reconsideration and schedule an evidentiary hearing to measure compliance for existing flow-through obligations.

SPRINT COMMUNICATIONS COMPANY, L.P. (Sprint): Sprint commented that the fundamental question is whether continued regulatory oversight of the intrastate toll service is necessary based on the present level of competition within this market. Sprint stated that the Public Staff and the Commission have agreed that competition does exist for intrastate toll services.

Sprint stated that, contrary to the Public Staff's allegations that access rate reductions have not been realized by toll customers, the reductions in rates provided to customers through various products have exceeded reductions in access charges. Sprint stated that it has made timely filings and further requests relief from flow-through obligations. As stated by Sprint, the Public Staff's insistence that reductions in charges to customers must coincide chronologically with reductions in access charges points to the absurdity of this argument. Sprint comments that "lock-step" reductions are rarely seen in a competitive marketplace.

Sprint commented that the timing of the reductions should not be the issue, but rather that customers have realized reductions equal to or greater than reductions in access charges. Sprint believes that requiring price reductions in response to access charge reductions may result in duplication of price adjustments caused by changes in market demands. Additionally, Sprint stated that a hearing should be held to address not only prospective flow-through obligations, but retrospective flow-through obligations as well.

In summary Sprint believes that the continued regulation of the IXC market is contrary to public interest. Further Sprint stated that the merits of continued regulation should be examined and that the Commission should cease regulating flow-throughs.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

There are essentially two issues presented at this point in this docket. The first is whether to require the IXCs to satisfy their existing flow-through obligations under existing methodology. The second is the nature and extent of any generic proceeding designed to consider a new methodology for flow-through obligations.

After careful consideration, the Commission is not persuaded by the arguments presented by Petitioners that IXCs should not be obliged to satisfy their retrospective flow- through obligations under the existing methodology. We, therefore, conclude that facility-based IXCs having outstanding access charge reduction flow-through obligations with the Commission should file tariffs by January 15, 2003, implementing rate changes effective January 1, 2003. Access charge reductions should be made on a dollar-for-dollar basis in accordance with the Commission's Order of July 8, 2002 in Docket No. P-100, Sub 72a. Companies with de minimis access charge reductions should attest to this fact in writing to the Commission.

The Commission believes very strongly that carriers having outstanding obligations should act expeditiously to file the necessary work papers using approved Commission methodology to institute previously approved ILEC access rate reductions which were to be implemented by IXC service providers to their customers. The Commission notes that many IXCs have not been in compliance in this matter.

Furthermore, it is the Commission's opinion that we should not proceed to consider any alternative methodologies, or the elimination of regulatory oversight for access reduction flow-throughs, until all outstanding obligations are met by all IXCs. Thus, until all IXCs are compliant with the Commission approved access charge reductions and flow- through obligations, the Commission is not inclined either to begin a comment cycle, much less to grant an evidentiary hearing in this matter. The Commission encourages all IXCs to work in harmony to effectuate the access charge reductions which the ILECs have made in the marketplace.

IT IS, THEREFORE, SO ORDERED.

1. That the Petitioners' Motion for Reconsideration is denied.

2. That, Sprint Communications Company, L.P., MCI WorldCom Network Services, Inc. and MCI WorldCom Communications, Inc. (collectively, MCI WorldCom), and AT&T Communications of the Southern States, LLC submit work papers utilizing approved Commission methodology reflecting Commission approved access flow reductions to be made to consumers within sixty (60) days from the issuance of this Order.

3. That the Public Staff no later than February 3, 2003, report to the Commission which companies, if any, remain out of compliance with their flow-through obligations and their recommendations for further action.

4. That, at such time as all IXCs are compliant with existing flow-through obligations, the Commission will decide whether to schedule an evidentiary hearing or receive comments in the generic docket.

ISSUED BY ORDER OF THE COMMISSION.
This 1st day of November, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

dh110102.02

DOCKET NO. P-100, SUB 99

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Quality of Service Objectives for Local	)	ORDER AMENDING COMMISSION
Exchange Telephone Companies	)	RULE R9-8 AND SCHEDULING
	)	AN EVIDENTIARY HEARING ON
	)	SPECIFIC ISSUES

BY THE COMMISSION: This Order concerns Commission Rule R9-8 – Service Quality of Telephone Companies.

Due to the volume of information provided in this Order, the following Sections have been created:

Section I	Background information on the docket (Pages 1 - 23)
Section II	Discussion of the legal issues to be addressed along with Commission conclusions (Pages 24 – 35)
Section III	Discussion of the remaining issues to be addressed along with Commission conclusions (Pages 35 – 116)
Section IV	A complete copy of Rule R9-8 as ordered by the Commission, reflecting the conclusions in Sections II and III (Pages 116 – 126)

SECTION I - BACKGROUND

SEPTEMBER 20, 2000 ORDER:

By Order dated September 20, 2000, the Commission revised Rule R9-8 to incorporate a new subsection concerning reporting on the service objectives. In said *Order*, the Commission required all incumbent local exchange companies (ILECs) and all competing local providers (CLPs) actually providing service to customers in North Carolina to file with the Commission by November 15, 2000, clear, detailed explanations of their measurement procedures for each service objective outlined in Rule R9-8. The Commission noted that it would need the information to evaluate and understand how each company is measuring the results to be reported in its monthly service objective report. Further in the *September 20, 2000 Order*, the Commission incorporated a reporting requirement wherein each local exchange telephone company would be required to file a report on the 20th day of each month beginning on January 20, 2001 with the Chief Clerk of the Commission detailing the results of its compliance with each of the uniform service objectives set forth in Rule R9-8.

JOINT MOTION FOR RECONSIDERATION OR CLARIFICATION OF SEPTEMBER 20, 2000 ORDER:

On October 10, 2000, Association of Communications Enterprises (ASCENT), Birch Telecom of the South, Inc., Business Telecom, Inc., ConnectSouth Communications of North

Carolina, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, ICG Telecom Group, Inc., ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom, MCImetro Access Transmission Services, LLC, NewSouth Communications Corp., North Carolina Cable Telecommunications Association, Time Warner Telecom of North Carolina, L.P., US LEC of North Carolina, Inc., and XO North Carolina, Inc., formerly NEXTLINK North Carolina, Inc. (collectively the Joint Movants) filed a Joint Motion to Reconsider or Clarify Order Revising Rule R9-8 to Adopt Reporting Requirement and Establishing Semiannual Service Quality Presentations and Joint Motion to Stay Order During Pendency of Reconsideration and/or Clarification. By their Motion, the Joint Movants requested that the Commission issue an order either (1) exempting CLPs from the new reporting and presentation requirements of revised Rule R9-8 and the September 20, 2000 Order or (2) clarifying that the revised rule and requirements of the September 20, 2000 Order apply to CLPs only insofar as they are offering services to residential customers.

ORDER REQUESTING COMMENTS ON JOINT MOTION:

By Order dated October 12, 2000, the Chair requested interested Parties to file comments on the Joint Movants' Motion by no later than October 27, 2000; comments were filed by CompTel, AT&T Communications of the Southern States, Inc. and TCG Carolina, ALLTEL, Rhythms Links, Inc., Carolina Telephone and Telegraph Company and Central Telephone Company (collectively Sprint), Time Warner Telecom of North Carolina, MCImetro Access Transmission Services, LLC, Verizon South, Inc. (Verizon), The Alliance of North Carolina Independent Telephone Companies, the Public Staff, Crystal Clear. Connections, and Allegiance Telecom of North Carolina, Inc.

NOVEMBER 7, 2000 ORDER:

On November 7, 2000, the Commission issued its *Order Granting Parties Extension of Time to File Explanations of Measurement Procedures* thereby extending the deadline from November 15, 2000 to November 30, 2000 for the Parties to file their explanations of measurement procedures.

NOVEMBER 29, 2000 ORDER:

On November 29, 2000, the Commission issued an *Order Denying the Motion for Reconsideration but Clarifying the September 20, 2000 Order*. In the *Order*, the Commission stated that after reviewing all of the comments received on the Joint Movants' Motion and examining the information available from other states (specifically from Tennessee, Florida, and Virginia), the Commission believed that it was reasonable and appropriate to clarify the *September 20, 2000 Order* to include only those companies which provide basic local residential and business exchange service to customers in North Carolina. The Commission noted that it has seen some evidence indicating that competition is developing in the business markets in North Carolina. However, the Commission further stated that it believes that there has been less evidence that the residential local telecommunications market is competitive to any significant degree. Therefore, the Commission noted that it was reasonable to continue to monitor the service quality for both basic local residential and business exchange service until competition fully develops without question in those markets. The Commission denied the Joint Movants' Motion for Reconsideration and clarified that its *September 20, 2000 Order* on reporting requirements applies only to those carriers providing basic local residential or business exchange service. The Commission further amended its *September 20, 2000 Order* revising Rule R9-8 as follows:

> (d) Reporting Requirement - Each local exchange telephone company actually providing basic local residential and/or business exchange service to customers in North Carolina shall file an original and five (5) copies of a report each month with the Chief Clerk of the Commission detailing the results of its compliance with each of the uniform service objectives set forth in this rule. Each company shall report its performance result for each objective for its state service area as a whole and whenever possible, by exchange or district. This report shall be filed no later than twenty (20) days after the last day of the month covered by the report. **NOTE:** The inserted clarifying language is underlined.

The Commission also altered the procedural schedule established in the docket and ordered the Companies to file detailed explanations on the standards by December 29, 2000 and postponed the reporting until March 20, 2001 and monthly on the 20th thereafter.

MEASUREMENT PROCEDURES:

ILEC Coalition: On December 21, 2000, BellSouth Telecommunications, Inc. (BellSouth), Sprint, and Verizon (collectively the ILEC Coalition), filed their detailed explanations of the measurement procedures for the service objectives set forth in Rule R9-8. Additionally, the ILEC Coalition formally requested that the Commission create an Industry Task Force to consider revisions to Rule R9-8 in light of today's telecommunications environment.

The ILEC Coalition noted that the service objectives in Rule R9-8 were established almost 13 years ago on December 20, 1988. The ILEC Coalition further noted that when the Commission issued its *Order* codifying Rule R9-8, it explicitly recognized that future circumstances could warrant changes in or exceptions to its newly codified standards by stating, "This rule is not meant, in any way, to preclude flexibility in considering future circumstances that may justify changes in or exceptions to these quality of service objectives." Therefore, the ILEC Coalition opined, it is time for the Commission and the industry to review the service objectives set forth in Rule R9-8 in light of the world of telephony in 2001.

The ILEC Coalition stated that the telecommunications world in 2001 hardly resembles the world in which the service objectives in Rule R9-8 were developed. The ILEC Coalition argued that at the most basic level, technological advancements alone have simply eliminated the need for many of the Rule R9-8 objectives. Further, the ILEC Coalition argued, the answer time requirements reflect an era that has long passed and do not accurately reflect a consumer's level of satisfaction with his or her local service provider. The ILEC Coalition noted that the length of time that a customer must speak with a service representative to order new service or to seek an explanation of a telephone bill has increased dramatically since Rule R9-8 was promulgated.

Further, the ILEC Coalition argued that Rule R9-8 was formulated in an era when no competition existed within the local exchange market. The ILEC Coalition asserted that it is undisputed that local exchange competition not only exists today but is growing at an ever increasing pace. The ILEC Coalition argued that it is axiomatic that as competition emerges in an industry, the need for regulation of that industry decreases.

The ILEC Coalition noted the open Federal Communications Commission (FCC) Proposed Rulemaking docket wherein the FCC proposes to "eliminate the bulk of the existing service quality reporting requirements, which no longer make sense in today's marketplace."

The ILEC Coalition suggested that an analysis similar to that proposed by the FCC should be conducted by the Commission of its service quality objectives. The ILEC Coalition requested that the Commission order the formation of an Industry Task Force to study possible revisions to, additions to, and/or elimination of certain Rule R9-8 service objectives. The ILEC Coalition stated that for the ultimate list of service objectives, the Industry Task Force could suggest standards which would guarantee customers acceptable service levels as competition becomes more pervasive. The ILEC Coalition stated that for the service objectives that the Industry Task Force does not recommend eliminating, the group could suggest new, minimum standards to use as competition becomes more pervasive. The ILEC Coalition stated that after competition becomes more pervasive, competition will set standards of excellence with the Commission establishing only minimum standards for the industry as a whole.

Alliance: The Alliance of North Carolina Independent Telephone Companies (the ALLIANCE)[1] filed its response on December 27, 2000. The ALLIANCE filed the explanation of each ALLIANCE member company's respective service quality measurement procedures and comments of The ALLIANCE relating to those procedures and the ILEC Coalition's request for establishment of an Industry Task Force. The ALLIANCE stated that it supports the ILEC Coalition's Request and noted that The ALLIANCE has previously made such a request before the Commission in this docket.

ALLTEL Carolina: On December 29, 2000, ALLTEL Carolina, Inc. (ALLTEL Carolina) filed its detailed explanations of its measurement procedures and comments on the ILEC Coalition's Request. ALLTEL Carolina stated that it agrees with the ILEC Coalition's Request for the establishment of an Industry Task Force.

ALLTEL Communications: On December 29, 2000, ALLTEL Communications, Inc. filed its detailed explanations of its measurement procedures and comments on the ILEC Coalition's

[1] The ALLIANCE consists of the following independent North Carolina local telephone companies: Citizens Telephone Company, The Concord Telephone Company, Ellerbe Telephone Company, LEXCOM Telephone Company, MEBTEL Communications, North State Telephone Company, and Randolph Telephone Company.

Request. ALLTEL stated that it agrees with the ILEC Coalition's Request for the establishment of an Industry Task Force.

MCIm: On January 4, 2001, MCImetro Access Transmission Services, Inc. (MCIm) filed its detailed explanations of its measurement procedures and comments on the ILEC Coalition's Request. MCIm stated that it supports the ILEC Coalition's Request.

Pineville: On December 29, 2000, Pineville Telephone Company (Pineville) filed its detailed explanations of its measurement procedures and comments on the ILEC Coalition's Request.. Pineville stated that it agrees with the ILEC Coalition's Request for the establishment of an Industry Task Force.

SECCA: On January 4, 2001, the Southeastern Competitive Carriers Association (SECCA) filed a letter supporting the ILEC Coalition's Request for the creation of an Industry Task Force to consider revisions to Rule R9-8. SECCA stated that it believes that the circumstances described in the Request warrant a review of the Rule.

TDS Companies: On December 29, 2000, Barnardsville Telephone Company, Saluda Mountain Telephone Company, and Service Telephone Company (the TDS Companies) filed their detailed explanations of their measurement procedures and comments on the ILEC Coalition's Request. The TDS Companies stated that they agree with the ILEC Coalition's Request for the establishment of an Industry Task Force.

The following companies not previously referenced filed detailed explanations of their measurement procedures for each of the service objectives outlined in Rule R9-8:

TeleConex, Inc.
Springboard Telecom, L.L.C.
Teligent Services, Inc.
Time Warner Telecom of North Carolina, L.P.
LTS of Rocky Mount, L.L.C.
NewSouth Communications Corporation
Adelphia Business Solutions Operations, Inc.
Budget Phone, Inc.
Madison River Communications, L.L.C.
NOW Communications, Inc.
CTC Exchange Services, Inc.
Intermedia Communications, Inc.
AT&T and TCG
US LEC of North Carolina
TriVergent Communications
Consumers Telephone and Telecom, Inc.
ITC^DeltaCom
Choctaw Communications, Inc., d/b/a Smoke Signal Communications

GENERAL ORDERS – TELECOMMUNICATIONS

The following companies filed letters with the Commission stating that they were not providing service in the State and therefore have no service to measure:

CCCNC, Inc., d/b/a Connect!
SBC Telecom
Advanced TelCom, Inc.
Pathnet Operating, Inc.
BroadRiver Communications Corporation
BellSouth BSE, Inc.
GSIwave.com, Inc.
Level 3 Communications, L.L.C.
ComScape Communications, Inc.
Network Plus
United Communications Hub, Inc. (UC HUB)
LecStar Telecom, Inc.
LineDrive Communications, Inc.
Mpower Communications Corporation
Excel Telecommunications, Inc.
Caronet, Inc.

The following companies filed responses indicating that they operate as resellers and do not have direct control over all of the objectives; for those objectives they do have control over, the companies provided an explanation of their measurement procedures for the objective:

PaeTec Communications, Inc.
Access Integrated Networks, Inc.
@ Communications, Inc.
AmeriMex Communications Corp.
Crystal Clear Connections, Inc.
New East Telephony, Inc.
OnePoint Communications
EZ Talk Communications, L.L.C.

The following remaining filings were made in this docket:

- ICG Telecom Group, Inc. requested an extension of time to file its detailed explanations until early January 2001. ICG never made a filing of its detailed explanations.

- DSLnet Communications, Inc. filed its service objectives report and noted that it only offers xDSL services.

- PaeTec Communications, Inc. filed its service objectives report with results for the month of December 2000.

- Budget Phone filed its service objectives report with results for September 2000.

- Talk.com Holding Company, d/b/a Tel-Save, Inc. filed its service objectives report with results for February 2001.

Public Staff: On March 1, 2001, the Public Staff filed its comments on the description filings of the ILECs and CLPs and on the ILEC Coalition's Request for the Commission to establish an Industry Task Force.

The Public Staff stated that most ILECs and CLPs submitted explanations for the last eleven objectives in Rule R9-8, with the exception of Regrade Application Held Orders Not Completed Within 30 Days. The Public Staff noted that the explanations generally contain insufficient detail to enable the Public Staff to determine how the measurements were actually performed. The Public Staff maintained that the vague explanations raise a host of questions about actually how the company would measure certain items.

The Public Staff stated that it believes that interested parties should be able to easily understand the specific service quality inputs a company uses and how the company operates on these inputs to generate the monthly statistics reported to the Commission. The Public Staff maintained that if there are company practices that further define the measurement procedures used, they should also be furnished to the Commission and Public Staff for review, as ALLTEL Carolina did with its December 29, 2000 response in this docket.

The Public Staff recommended that the Commission order the ILECs and CLPs to revise and upgrade their detailed explanations of their measurement procedures for the last twelve objectives in Rule R9-8 with the exception of the Regrade Application Held Orders Not Completed Within 30 Days objective, as necessary to comply with the directive of the Commission, and to furnish the revisions to the Commission no later than March 31, 2001.

The Public Staff further noted that most of the ILECs and CLPs addressed the first seven objectives of Rule 9-8 by simply reporting that they do not measure those objectives. The Public Staff maintained that although the companies never stated that it is impossible for them to measure these objectives, the Public Staff does not recommend that they be required to do so at this time. The Public Staff recommended that the Commission refrain from requiring the companies to develop or initiate procedures for measuring and reporting these seven objectives in order to give an Industry Task Force the opportunity to consider and report on the other objectives. These seven objectives are as follows:

(1) Intraoffice completion rate
(2) Interoffice completion rate
(3) Direct distance dialing completion rate
(4) EAS transmission loss
(5) Intrastate toll transmission loss
(6) EAS trunk noise
(7) Intrastate toll trunk noise

The Public Staff stated that with respect to the Regrade Application Held Orders Not Completed Within 30 Days objective, the Public Staff recognizes that there are no ILECs or CLPs operating multiparty service in North Carolina today. Therefore, the Public Staff recommended that the Commission delete that service objective from Rule R9-8.

The Public Staff further recommended that the Commission continue to require all ILECs and CLPs subject to Rule R9-8 to adhere to the reporting schedule established in the *November 29, 2000 Order*, but recommended that the reporting requirement be limited, for the time being, to the following ten objectives in Rule R9-8:

(1) Operator "O" answertime
(2) Directory assistance answertime
(3) Business office answertime
(4) Repair service answertime
(5) Initial customer trouble reports (excluding repeat reports)
(6) Repeat reports
(7) Out-of-service troubles cleared within 24 hours
(8) Regular service orders completed within 5 working days
(9) New service installation appointments not met for Company reasons
(10) New service held orders not completed within 30 days

The Public Staff commented that the ILEC Coalition has raised some interesting points in its request for the formation of an Industry Task Force that warrant further study. The Public Staff stated that it is not opposed to the Commission establishing an Industry Task Force to study the service quality objectives. The Public Staff did, however, recommend that the Commission only allow the Task Force approximately six months to meet, develop recommendations, and submit a report on its recommendations to the Commission. The Public Staff also proposed that the Commission require the Task Force to devise and propose to the Commission a uniform measurement procedure for each of the 17 service quality objectives listed in Rule R9-8 (assuming that the Commission eliminated the Regrade Application Held Orders objective).

The Public Staff proposed that as the Industry Task Force carried out its mission, the Public Staff would simultaneously conduct its own independent evaluation of the service objectives and service quality measurements in North Carolina. The Public Staff stated that it may well be, as the ILEC Coalition suggested, that the Commission should modify certain objectives and establish some entirely new objectives to monitor service quality in the current digital/fiber network environment. The Public Staff maintained that its goal in this process would be to ensure that the Commission gives appropriate consideration to the needs of the using and consuming public as it weighs possible changes to the objectives.

MARCH 22, 2001 ORDER:

On March 22, 2001, the Commission issued its *Order Amending Rule, Forming Industry Task Force, Requesting Independent Evaluation by the Public Staff, and Revising Reporting Requirement*. In its *Order*, the Commission:

(1) Amended Rule R9-8 to delete the Regrade Application Held Orders Not Completed Within 30 Days objective;

(2) Granted the ILEC Coalition's request for the Commission to establish an Industry Task Force;

(3) Specified that the only directive for the Industry Task Force (hereinafter referred to as the ITF) as of the date of the *Order* was to establish a uniform set of measurement procedures for the ten objectives outlined in Rule R9-8 and listed below in Item #5 and requested that the ITF file the uniform set of measurement procedures with the Commission no later than June 21, 2001;

(4) Requested that the Public Staff perform its proposed evaluation on Rule R9-8, service quality, and appropriate measures and file a report with the Commission detailing its evaluation and providing specific recommendations by no later than June 21, 2001; and

(5) Continued to require the companies to file reports on the Rule R9-8 service objectives, but limited the reporting requirement to cover only ten of the Rule R9-8 service objectives. The ten service objectives that the Commission required the companies to report are listed below:

(1) Operator "O" answertime
(2) Directory assistance answertime
(3) Business office answertime
(4) Repair service answertime
(5) Initial customer trouble reports (excluding repeat reports)
(6) Repeat reports
(7) Out-of-service troubles cleared within 24 hours
(8) Regular service orders completed within 5 working days
(9) New service installation appointments not met for Company reasons
(10) New service held orders not completed within 30 days

JUNE 20, 2001 ORDER:

On June 20, 2001, the Commission issued its *Order Extending Time for Filing Date* wherein the Commission extended the filing date for the Public Staff's Independent Evaluation Report from June 21, 2001 to January 30, 2002. The Commission specified that the Public Staff's Report should include specific comments evaluating the ITF's Report. The Order also required the ITF to file its Report by no later than September 28, 2001.

JUNE 21, 2001 ITF INITIAL REPORT:

On June 21, 2001, BellSouth filed its Response to the Commission's *March 22, 2001 Order* and the Initial Report of the ITF. The ITF stated that in addition to developing a uniform set of measurement procedures for the ten objectives outlined in Rule R9-8, the ITF has accepted the Commission's invitation to confer as to possible recommendations for revisions to Rule R9-8. The ITF stated that it will continue its efforts and discussions with regard to modernization of Rule R9-8. The ITF noted that while much of this work is underway, a great deal of factual information must be gathered and analyzed in order to formulate any meaningful recommendation to the Commission.

The ITF stated that its efforts in this matter have been influenced by the recognition that a broad range of local exchange service providers are subject to the Commission's Order requiring monthly service objective reporting. The ITF noted that these range from small CLPs serving a few hundred access lines, to small ILECs serving a few thousand access lines, to larger CLPs serving tens of thousands of lines, to major ILECs serving hundreds of thousands of lines. The ITF maintained that it is apparent that the various providers will necessarily use different systems and means to conduct their measurements. The ITF noted that despite these differences, it concluded that it was possible to establish general procedures, which would be used in measuring compliance with these service objectives, so that the measurements will be uniform.

SEPTEMBER 28, 2001 ORDER:

On September 28, 2001, the Commission issued its *Order Granting Extension for Reports* wherein the Commission extended the time for the ITF Report from September 28, 2001 to November 30, 2001, and a similar extension for the Public Staff's Report from January 30, 2002 to March 30, 2002.

NOVEMBER 30, 2001 FINAL REPORT OF THE ITF:

On November 30, 2001, the ITF filed its Final Report. The ITF noted that pursuant to the Commission's March 22, 2001 Order, the ITF met over a period of approximately six months.

The ITF attached a copy of an analysis prepared by the Georgetown Consulting Group, Inc. (GCG). The ITF argued that the guiding principle for the Commission in reviewing its existing service quality objectives should be to establish standards that are important and relevant to consumers in light of today's competitive marketplace. The ITF maintained that as much as possible, the Commission should let the marketplace function in an emerging competitive market.

The ITF made the following recommendations:

(1) That the service quality standards of Commission Rule R9-8, insofar as they are service specific, should be clarified to apply only to residential service;
(2) That the reporting requirements of Commission Rule R9-8 should apply only to companies that meet a certain threshold level of complaints; and
(3) That the Commission revise the service standards contained in Commission Rule R9-8 in the manner specifically recommended by the GCG in its Service Quality Report, as follows:

(a) Revise the Operator "O" Answertime standard to reflect an average answertime goal of 7.8 seconds;

(b) Decline to regulate or set quality or any other standard for services that it finds to be competitive in nature, or for which there are adequate service alternatives. The Commission should consider eliminating the directory assistance answertime standard. In this regard, the Commission may want to continue to require reporting of directory assistance answertimes, while imposing no standard, as a means of judging the response of the transitional competitive market to the removal of this standard. If the Commission declines to eliminate the directory assistance answertime standard, it should adopt an average answertime standard of 16 seconds.

(c) Consider eliminating the business office and repair office answertime standards. In the alternative, the Commission should establish, not as a standard but as a goal, an average answertime of 60 seconds. Consistent with this goal recommendation, the Commission should monitor complaints relating to answertime to determine if this goal is an important factor in customers' perceptions of service quality;

(d) Revise the out-of-service troubles cleared within 24 hours standard to require that 90% of such troubles be cleared within 24 hours;

(e) The remaining existing standards should be retained, at least for now, although the Commission may want to consider appropriate revisions to all of its service quality standards as competition advances in North Carolina; and

(f) Establish an appropriate mechanism for responding to and recognizing events outside the control of service providers. The burden of establishing the legitimacy of the reasons for the adjustments and of their response to the conditions necessitating such adjustment should remain with the companies.

Overall, the GCG recommended the following standards for Commission Rule R9-8:

Description	Current Standard	GCG's Proposed Standard[1]
Operator "O" Answertime	90% or more within 10 seconds or an EAA[2] in seconds	7.8 second average answertime
Directory Assistance Answertime	85% or more within 10 seconds or an EAA in seconds	Eliminate; in the alternative, 16 second average answertime
Business Office Answertime	90% or more within 20 seconds or an EAA in seconds	Eliminate; in the alternative, 60 second average answertime
Repair Service Answertime	90% or more within 20 seconds or an EAA in seconds	Eliminate; in the alternative, 60 second average answertime
Initial Customer Trouble Reports	4.75 or less per 100 access lines	Same as existing
Repeat Reports	1.0 report or less per 100 access lines	Same as existing
Out-of-Service Troubles Cleared within 24 Hours	95% or more	90% or more
Regular Service Orders Completed within 5 Working Days	90% or more	Same as existing
New Service Installation Appointments Not Met for Company Reasons	5% or less	Same as existing
New Service Held Orders Not Completed within 30 days	0.1% or less of total access lines	Same as existing

The GCG further recommended that measurements should be on a time interval of no less than a month's duration. The GCG noted that no standard has been identified in any jurisdiction that is applied on a time interval smaller than one month. The GCG maintained that a number of jurisdictions measure service quality measures on a monthly basis, while providing that violation of standards does not occur so long as the providers meet the standards on a rolling quarterly or annual basis.

The GCG also argued that the Commission should establish an appropriate mechanism for reporting the effect of events outside the control of the carriers (a Force Majeure clause).

BELLSOUTH AND VERIZON'S DECEMBER 6, 2001 LETTER:

On December 6, 2001, BellSouth and Verizon filed a letter with the Commission stating that, as participants on the ITF, they agree with and support all aspects of the ITF's November 2001 filing in principle. BellSouth and Verizon stated that while they believe as the ITF indicated that the uniform industry standards should apply to residence customers only, both

[1] The Georgetown Consulting Group recommended that the Commission allow carriers to propose an adjustment for any standard for events outside their control.

[2] EAA – Equivalent Average Answertime.

BellSouth and Verizon will continue to report the data combined for both residence and business service.

APRIL 1, 2002 ORDER:

On April 1, 2002, the Commission issued its *Order Granting Public Staff's Motion for Extension of Time to file its Report* by no later than April 5, 2002.

PUBLIC STAFF'S APRIL 5, 2002 REPORT AND RECOMMENDATIONS:

In its April 5, 2002 Report, the Public Staff recommended that the Commission:

(1) Establish a uniform refund policy that requires all regulated utilities providing DA service to give a bill credit to any customer who complains of receiving an incorrect listing or no listing, unless the company can demonstrate that the listing provided was correct or the inability to provide a listing was not the fault of the company;

(2) Require all carriers to update their DA listings within 48 hours of completion of a service order;

(3) Require each company that provisions its own DA services to conduct an audit of its DA accuracy and to file the results with the Commission within six months;

(4) Retain the current 95% objective for Out-of-Service Troubles Cleared Within 24 Hours;

(5) Retain the first seven objectives of Rule R9-8 in their present form;

(6) Reject the ITF's proposals (a) to limit the service quality reporting requirements to residence services; and (b) to link the requirement for monthly reporting to the number of monthly customer complaints received against a company by the Public Staff's Consumer Services Division;

(7) Require all companies to provide monthly exchange-level reports on the last six service objectives of Rule R9-8, in addition to the existing monthly state-level reports on Operator "O" Answertime, Directory Assistance Answertime, Business Office Answertime, and Repair Service Answertime;

(8) Post the monthly service quality reports on the Commission's website, after it establishes final objectives and a set of uniform measurement procedures;

(9) Require any company seeking a waiver of part or all of Rule R9-8 to file a waiver request along with the data for which adjustments are requested;

(10) Revise Rule R9-8 to incorporate a set of self-enforcing penalties that would apply to all ILECs and CLPs and would replace the penalty provisions in the Price Regulation Plans as soon as the revisions to Rule R9-8 take effect;

(11) Adopt rules requiring local providers to furnish at their expense alternative service to customers who are out of service for an extended period of time or who fail to receive service within a reasonable time frame [COMMISSION NOTE: **The Public Staff withdrew this recommendation in its July 3, 2002 filing stating that it believes that the enforcement provisions will be sufficient to protect customer interests.**]; and

(12) Further modify Rule R9-8 to require issuance of bill credits to customers whenever their local service providers fail to provide them with service at or better than the benchmark performance for the following objectives:

(a) Out-of-Service Troubles Cleared Within 24 Hours;
(b) Regular Service Orders Completed Within 5 Working Days;
(c) New Service Installation Appointments Not Met for Company Reasons; and
(d) New Service Held Orders Not Completed Within 30 Days.

The Public Staff also provided its responses to the ITF's November 2001 Final Report. The Public Staff stated that it has several concerns about the ITF's positions relative to competition and service quality. The Public Staff commented that it is clear to many observers that competition in North Carolina is still in its infancy. The Public Staff maintained that most of the competition to date has predictably focused on metropolitan areas, where the subscriber density is highest, and on business customers who typically require more lines per location and more and higher-priced services than residential customers.

The Public Staff stated that it is concerned about using competition to justify relaxation of the current provisions of Rule R9-8. The Public Staff noted that even looking years ahead, it seems reasonable to expect that some rural areas of North Carolina may never experience viable competition. The Public Staff argued that customers in those areas should not be denied quality service from their ILEC simply because they lack competitive alternatives.

Moreover, the Public Staff asserted, competition for customers does not necessarily translate into competition in the service quality arena. The Public Staff stated that it is conceivable, and perhaps likely, that companies may find it more practical to avoid any mention of service quality and focus instead on more tangible concerns such as pricing or feature availability in order to attract new customers. The Public Staff maintained that in the absence of any regulatory restrictions on service quality, consumers may eventually find they have no choice but to expect inadequate service quality from all potential service providers.

The Public Staff noted that Oregon is one of the states that have been proactive in furnishing service quality information to its citizens. The Public Staff stated that the Oregon Public Utility Commission's website provides service quality statistics for all telecommunications companies in Oregon with over 1,000 access lines. The Public Staff provided an Attachment to its Report which contains a set of service statistics obtained from the Oregon Public Utilities Commission website on March 25, 2002.

The Public Staff also included an Attachment to its Report which provides a summary of states with a refund or bill credit provision. The Public Staff noted that Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee have bill credits for customers out of service for more than 24 hours (in Mississippi, the standard is 48 hours). The Public Staff also noted that the Alabama Commission requires companies to provide alternate means of telecommunications. The Public Staff stated that according to the Attachment, South Carolina and Louisiana are the only other BellSouth states besides North Carolina that do not require bill credits for customers out of service for more than 24 hours (48 hours in Mississippi).

The Public Staff believes that once a final set of revised objectives is adopted and uniform measurement procedures are approved, the Commission should develop procedures for publicly releasing this information on its Internet website.

MAY 31, 2002 COMMENTS OF ITF:

On May 31, 2002, the ITF filed its Comments on the Public Staff's Report and Recommendations. The ITF argued that the Commission should reject the Public Staff's regressive philosophy and unjustified recommendations. The ITF's policy statement urged the Commission to focus on service quality objectives that are important to the consumer and that best accommodate new technologies and innovative ways of doing business in a competitive marketplace. The ITF noted that an independent survey of North Carolina customers was performed by Maritz Market Research, Inc. (MMR) to support the business office and repair center service quality recommendations presented by the GCG. The ITF argued that the GCG's recommendations, likewise, reflected a move toward greater reliance on market forces to produce maximum consumer benefits.

The ITF maintained that the Public Staff, on the other hand, advocated increased regulatory requirements and operational constraints, including a specific directory assistance refund rule and bill inserts; more detailed service reporting requirements; and automatic monetary penalties for less-than-perfect compliance with Commission service standards. The ITF argued that these recommendations are not based on any evidence of service problems in the industry, but rather on the Public Staff's speculation that such problems must exist. For instance, the ITF stated that the Public Staff conceded that "instances of DA inaccuracy are infrequent," cited only 21 DA complaints for the industry from 1999 through 2001, and recognized a decreasing trend over that period. In the face of this objective evidence of good service, the ITF noted that the Public Staff nevertheless recommended audits for DA providers, an inflexible refund policy, and uniform DA listing update rules.

The ITF argued that these and the other measures the Public Staff recommended are rooted in a fundamental misunderstanding of competitive markets. The ITF noted that the Public Staff observed that "competition for customers does not necessarily translate into competition in the service quality arena," and that even if customers are willing to trade off service quality for price, "it does not necessarily follow that they would want the Commission to authorize the reductions in service quality standards proposed by the ITF prior to any negotiations." The ITF asserted that in an openly competitive market, competition for customers will, in fact, translate into competition in the service quality arena, because providers will be driven to meet diverse customer desires – whether they are lower prices, better service quality, or other factors. The ITF argued that if the Commission accepts the Public Staff's philosophy, however, customers will never get the opportunity to make any choices among these elements, based on what is important to them. Rather, the ITF argued, the Commission will make decisions for customers; all providers will be subject to the same, unduly restrictive standards and they will have little ability to distinguish their service offerings from one another to meet varying consumer needs.

The ITF maintained that the hallmark of a competitive market, of course, is choice. But the ITF argued that the Public Staff believes that uncertainty about the pace of competitive evolution necessitates a return to – and expansion of – direct behavioral regulation, rather than design of an environment that fosters greater choice. The ITF asserted that this approach is at odds with the Telecommunications Act of 1996 (TA96 or the Act), the North Carolina Legislature's authorization of alternative regulatory methods and competitive local exchange service, and sound public policy.

The ITF stated that although it does not share the Public Staff's unsupported opinion about the need for direct behavioral regulation, it does not agree that no one can predict just how fast widespread competition will develop. The ITF argued that what *is* certain, however, is that the unnecessarily prescriptive approach the Public Staff recommended will discourage competitive evolution – as well as increase companies' costs, which must ultimately be passed on to the consumer. The ITF noted that while the Public Staff undoubtedly means well, its recommendations will compromise, rather than advance, the public interest.

The ITF argued that the Commission cannot adopt rules based only on ill-founded assumptions and counterintuitive logic. The ITF stated that because the Public Staff has identified no service problem that needs to be remedied based upon compelling evidence, its proposed rules are not reasonably necessary to attain good service. The ITF described in more detail why greater regulation and micro-management of telecommunications companies is not necessary or in the public interest.

ATTORNEY GENERAL'S JUNE 21, 2002 COMMENTS:

On June 21, 2002, the Attorney General filed its Comments which dealt largely with the legal issues of website reporting and bill credits.

JUNE 26, 2002 ORDER:

On June 26, 2002, the Commission issued its *Order Requesting Briefs on Certain Issues* wherein the Commission requested Initial Briefs and Reply Briefs on the two legal issues raised by the Attorney General's June 21, 2002 Comments.

PUBLIC STAFF'S JULY 3, 2002 FURTHER RECOMMENDATIONS:

On July 3, 2002, the Public Staff filed its Further Recommendations in this docket. The Public Staff noted that its proposed revisions include:

(1) Updates to the Directory Assistance Answertime, Business Office Answertime, and Repair Service Answertime objectives to accommodate the widespread industry usage of automated menus and interactive voice response systems;
(2) Revision to the Initial Customer Trouble Reports, Repeat Reports, and New Service Held Orders Not Completed Within 30 Days objectives to clarify the type(s) of access lines referenced in the objectives; and
(3) Modification to the New Service Installation Appointments Not Met for Company Reasons objective to incorporate other types of customer appointments and to establish a minimal set of policies companies should observe in setting and meeting appointments with their customers.

The Public Staff stated that it has studied the service objectives of a number of states and believes that Florida has one of the most comprehensive and detailed sets of service quality rules in existence. The Public Staff noted that some of the changes it has proposed closely parallel language set forth in the Florida rules; in a few instances the Public Staff noted that it has chosen to adopt definitions and provisions from the Florida rules practically verbatim. The Public Staff suggested that the Commission carefully examine the Florida rules and give due consideration to whether other provisions of those rules may be reasonably applied to the operations of ILECs and CLPs to ensure that North Carolina customers are afforded adequate service quality in all phases of these companies' operations.

Specifically, the Public Staff noted that it has carefully weighed the merits of requesting that the Commission adopt Florida's rules setting specific objectives for performance on the automated menu systems that perform certain directory assistance, business office, and repair service functions. The Public Staff maintained that while it does not propose the inclusion of such objectives at this time, it will petition the Commission to promulgate such rules if they appear necessary based on the Public Staff's monitoring of answertime service quality in the future.

Overall, the Public Staff proposed the following objectives for Rule R9-8:

Description	Current Standard	Public Staff's Proposed Standard
Intraoffice Completion Rate	99% or more	Same as existing
Interoffice Completion Rate	98% or more	Same as existing
Direct Distance Completion Rate	95% or more	Same as existing
EAS Transmission Loss	95% or more between 2 and 10 db	Same as existing
Intrastate Toll Transmission Loss	95% or more between 3 and 12 db	Same as existing
EAS Trunk Noise	95% or more 30 dbrnc or less	Same as existing
Intrastate Toll Trunk Noise	95% or more 33 dbrnc or less	Same as existing

Operator "O" Answertime	90% or more within 10 seconds or an EAA in seconds	90% or more within 10 seconds
Directory Assistance Answertime	85% or more within 10 seconds or an EAA in seconds	85% or more calls directed to a live operator are answered within 10 seconds
Business Office Answertime	90% or more within 20 seconds or an EAA in seconds	90% or more calls directed to a live business office representative are answered within 20 seconds
Repair Service Answertime	90% or more within 20 seconds or an EAA in seconds	90% or more calls directed to a live repair service representative are answered within 20 seconds

Description	**Current Standard**	**Public Staff's Proposed Standard**
Initial Customer Trouble Reports	4.75 or less per 100 access lines	4.75 or less per 100 total access lines
Repeat Reports	1.0 report or less per 100 access lines	1.0 report or less per 100 total access lines
Out-of-Service Troubles Cleared within 24 Hours	95% or more	Same as existing
Regular Service Orders Completed within 5 Working Days	90% or more	Same as existing
New Service Installation Appointments Not Met for Company Reasons	5% or less	Same as existing
New Service Held Orders Not Completed within 30 days	0.1% or less of total access lines	Same as existing

JULY 24, 2002 ORDER:

On July 24, 2002, the Commission issued its *Order Extending Time for Briefs Regarding Legal Issues.*

INITIAL AND REPLY BRIEFS ON LEGAL ISSUES:

On August 1, 2002, the ITF and the Public Staff filed Initial Briefs.

On August 21, 2002 the ITF filed its Reply Brief. Further, on August 21, 2002, the Attorney General filed its Reply Brief wherein he stated

> Publishing letter grades for carriers on the Commission's web page, based on their level of compliance with the Commission's service quality rules, avoids the trade secret debate entirely and would be a consumer-friendly way to provide information to the public. [page 3 of Reply Brief]

Further, on August 21, 2002, the Public Staff filed a letter stating that while it would not be filing a Reply Brief on the legal issues raised by the ITF, the Public Staff clarified that in its proposed Commission Rule R9-8 filed on July 26, 2002 (**COMMISSION NOTE:** The Public Staff intended to reference its August 1, 2002 Initial Brief), sections (f) through (i) which concern penalty payment calculations would not apply to CLPs.

AUGUST 29, 2002 ORDER:

On August 29, 2002, the Chair issued an *Order Requesting Initial Comments and Reply Comments on Attachment A to the Public Staff's July 3, 2002 Filing and on the Attorney General's Proposed Service Quality Rating System.* The Chair recognized that the ITF already made brief comments on the Public Staff's proposal in its August 21, 2002 Reply Brief. However, the Chair allowed a further official opportunity to comment on the proposal and requested that the Public Staff file reply comments on the concerns expressed by the ITF.

INITIAL AND REPLY COMMENTS ON THE PUBLIC STAFF'S JULY 3, 2002 FILING AND THE ATTORNEY GENERAL'S PROPOSED RATING SYSTEM:

On September 19, 2002, the Attorney General and the ITF filed initial comments. Reply comments were filed on October 10, 2002 by the Attorney General and the Public Staff.

INITIAL COMMENTS FILED SEPTEMBER 19, 2002:

ATTORNEY GENERAL: The Attorney General only addressed the issue of posting service quality results.

ITF: The ITF stated in its initial comments that it maintains the same position it took in its August 21, 2002 Reply Brief and in its May 31, 2002 Comments on the Public Staff's first Report and Recommendations. The ITF argued that the Public Staff's extreme recommendations are unsupported by any evidence of need, they will retard competitive evolution, they will discourage investment in new technologies to efficiently meet customers' needs, and they are inconsistent with the General Assembly's intent to rely more on market forces to achieve maximum consumer benefits. The ITF stated that while the Public Staff no doubt means well, the primary effect of its proposals for increased regulatory requirements and operational constraints will be to raise carriers' costs for no good reason – costs that will necessarily be passed onto North Carolina's telecommunications consumers.

The ITF maintained that if the Commission is inclined to adopt any of the Public Staff's recommendations, the ITF requests a hearing to thoroughly explore these issues and to establish whether the Public Staff's proposals are supported by the requisite competent, material, and substantial evidence of need.

The ITF renewed its request for the Commission to adopt the recommendations of the ITF and the GCG. The ITF argued that if the Commission declines to accept the ITF's November 30, 2001 proposal, then it should apply the Uniform Measurement Procedures filed by the ITF on June 21, 2001 for business and residence customers, and it should modify the existing standards in accordance with the GCG's following recommendations:

(1) Require reporting of Rule R9-8 standards only when a company exceeds a defined threshold of consumer complaints;
(2) Revise the Operator "O" answertime standard to reflect an average answertime goal of 7.8 seconds;
(3) Decline to set quality or other standards for services deemed to be competitive. In this regard, the Commission should consider eliminating the directory assistance answertime standard, although it may require transitional reporting of answertimes to judge the effect of removal of this standard. If the Commission does not eliminate the DA answertime standard, it should adopt an average answertime standard of 16 seconds;
(4) Consider eliminating the business and repair office answertime standards. In the alternative, the Commission should establish as a goal, rather than a standard, an average answertime of 60 seconds;
(5) Revise the standard for Out-of-Service Troubles Cleared Within 24 Hours to 90%; and
(6) Establish a mechanism to respond to and recognize service-affecting events outside carriers' control.

The ITF noted that since so much time has passed since the ITF submitted these recommendations, the ITF urged the Commission to review the GCG Report again for the analysis, data, and policy rationale supporting the ITF's recommendations in this docket.

The ITF noted that it opposes the Attorney General's letter grade approach.

REPLY COMMENTS FILED ON OCTOBER 10, 2002:

ATTORNEY GENERAL: The Attorney General filed reply comments only addressing whether service quality information should be published on the Commission's website.

PUBLIC STAFF: The Public Staff addressed the issues of reporting at the exchange and/or wire center level, separate reporting for residential and business customers, determining when a call is answered, the Operator "O" answertime, DA answertime, and the Attorney General's reporting proposal in its reply comments

PETITION FOR MODIFICATION OR, IN THE ALTERNATIVE, MOTION FOR HEARING:

On October 8, 2002, the ITF filed a Petition for Modification of Rule R9-8 or, in the Alternative, Motion for Hearing. The ITF argued that it has produced ample evidence supporting modifications to Rule R9-8 sought by the ITF and opposing changes sought by the Public Staff, but, despite several filings and opportunities to present evidence in support of its positions, the Public Staff has produced only unsupported opinions. The ITF noted that it has requested, based upon recommendations of the GCG that (1) the Commission adopt a directory assistance average answer time requirement of 7.8 seconds, which is the average for those commissions utilizing an average answer time standard; (2) the Commission decline to regulate or set quality or other standards for competitive services such as directory assistance; and (3) the Commission eliminate business office and repair answer time standards or that, in the alternative, the Commission establish a goal of an average answer time of 60 seconds. The ITF maintained that these requests are amply supported by the GCG report and the ITF's filings in this matter.

More generally, the ITF recommended (i) that the service quality standards of Rule R9-8, insofar as they are service specific, should be clarified to apply only to residential service, and (ii) that the reporting requirements of Rule R9-8 should apply only to companies that meet a certain threshold level of complaints. The ITF argued that these recommendations are amply supported by the policies underlying the introduction of competition in the local telecommunications market, including consumer choice and efficient competition.

The ITF maintained that the Public Staff has responded, without supporting evidence, by insisting that Rule R9-8 be made far more stringent by, for example, significantly altering the way the Rule accounts for calls made through the use of modern, automated systems; requiring posting of ITF members' proprietary trade secret information on the internet; and requiring self-enforcing penalties. The ITF stated that as it has pointed out, these and other of the Public Staff's numerous proposed changes will affect companies' systems in varying ways. The ITF stated that a hearing is warranted to consider the operational impacts, as well as the anticonsumer effects, of the Public Staff's recommendations in the event the Commission is inclined to consider them further.

The ITF stated that another example of a factual issue that warrants a hearing (if the Commission declines to accept the ITF's recommendations) is the Public Staff's unsupported assertion that competition provides no protection for rural businesses because they lack competitive alternatives. The ITF stated that it would prove these allegations to be incorrect and irrelevant to the level of service these customers receive. For example, the ITF stated that its members answer calls from both rural and metropolitan business customers in the same manner by the same centers and employees. Simply put, the ITF argued, metropolitan customers do not receive preferential answertime treatment, and competition is working to protect both types of customers.

The ITF asserted that the Public Staff has provided nothing but unjustified assumptions and conclusions to support its proposals. The ITF argued that it, on the other hand, has provided the Commission with ample factual and policy reasons to accept its recommendations. The ITF thus urged the Commission to accept its recommendations for modifications to Rule R9-8 without further delay. The ITF commented that absent evidence from the Public Staff, the Commission should resolve all factual issues in favor of the ITF and make the modifications to Rule R9-8 sought by the ITF. The ITF maintained that if the Commission is not inclined to do so, and instead wishes to consider the Public Staff's recommendations, then the Commission should conduct an evidentiary hearing to determine the facts underlying both the Public Staff's and the ITF's recommendations.

SECTION II – LEGAL ISSUES

The first legal issue relates to the issue of website reporting in which the Public Staff recommended that the Commission should post service quality reports, updated on a quarterly basis, on its website. The second legal issue relates to the Public Staff recommendation that the Commission revise Rule R9-8 to require ILECs to pay self-effectuating penalties. The Industry Task Force (ITF) has questioned whether the website posting requirement, if implemented, may be violative of "trade secret" protections afforded under G.S. 66-152 et seq. and G.S. 132-1.2. It also questions that the self-effectuating penalties exceed the Commission's authority and violate due process. For the purposes of this discussion, the term "self-effectuating penalties" includes bill credits or various types of refund obligations.

The Commission requested comments from the parties. The Attorney General filed comments supporting the Public Staff recommendations on June 21, 2002, which are summarized below.

WEBSITE REPORTING

Attorney General argued that posting service quality reports on the website was certainly in the public interest inasmuch as it will increase consumer information and choice. It is common practice for governmental agencies to provide the public with information on the companies they regulate. The Board of Transportation Statistics, for example, posts airline on-time statistics on its web page, while the Office of the Comptroller of the Currency posts its Community Reinvestment Act evaluations on national banks. The National Highway Traffic Safety Administration posts reports showing, among other things, whether particular makes and models of automobiles are in compliance with federal standards. The Attorney General also urged that these service quality reports are not trade secrets. Information is not a trade secret simply because there is some possibility that the information could damage a company's reputation, nor do the service quality reports provide any insight into the carriers' business plans or strategies. Such reports are not the "property" of the telephone companies once they are filed.

In Reply Comments, the Attorney General argued that the trade secret exception to the Public Records Act was not designed to "hide violations of rules and regulations from the public." The service quality information does not reveal anything that the trade secret exception was designed to protect, such as internal strategies, secret formulas, or new inventions. The Attorney General noted that the General Assembly has required that sanitation grades be posted for restaurants, a very competitive business. See G.S. 130A-249. The Attorney General suggested that publishing letter grades for carriers on the Commission's web site, based on their level of compliance with the Commission's service quality rules, avoids the trade secret debate entirely and would be a consumer-friendly way to provide information to the public. If the Commission or Public Staff compiled the information on its own, the carriers could not claim that the information is a trade secret, because the data would be compiled by the agency and would not be the "property" of private persons, as required under G.S. 132-1.2(1)b. Grades might indeed be easier for the public to understand. A service quality grade could be assigned to a carrier based on a formula tied to the carrier's level of compliance with the standards set forth in Rule R9-8 or selected parts of them.

Public Staff disagreed with the ITF that "trade secret" status should be accorded to service performance data. The Public Staff distinguished this case from State ex rel. Utilities Commission v. MCI Telecommunications Corp., 132 N.C. App. 625, 514 S.E.2d 276 (1999) (MCI), in which the Court of Appeals held that access line data reported to the Commission was entitled to such status. Applying the six factors listed in Wilmington Star News v. New Hanover Regional Medical Center, 125 N.C. App. 174, 480 S.E. 2d 53, app. dismissed, 346 N.C. 557, 488 S.E.2d 826 (1997) (Wilmington Star News), the Commission can reasonably find that service quality reports do not contain "trade secrets" as defined by G.S. 66-152(3). These factors are: (1) the extent to which information is known outside the business; (2) the extent to which the information is known to employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to business or competition; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could properly be acquired or duplicated by others.

The Public Staff noted that the Commission has general supervisory authority over the service rendered by public utilities. Service quality information is obtained by the Commission to ensure that the provision of local telephone service meets minimum standards. The Public Staff has authority under G.S. 62-34(b) to enter upon the companies' premises and to conduct service quality measurements to determine whether the companies are meeting Rule R9-8; but the Commission has chosen to exercise its authority under G.S. 62-36 to require the companies to conduct their own service quality measurements and submit monthly reports. In contrast to reports that could provide insight into the companies' business plans and strategies, service quality reports simply indicate whether carriers are in compliance with the Commission rules. Far from inhibiting the growth of a competitive environment, access to service quality reports by the public would benefit consumers and promote the competition that was intended by the Legislature. The ITF argued that public disclosure of service quality reports would be anticompetitive and harmful to the companies' interests. This may be true if the company is providing poor service, but it may have the opposite effect of encouraging these companies to provide good service. That a company may prefer certain information to be kept out of the public view does not make the information a "trade secret." A company may be cited for noncompliance with a number of regulatory requirements, including OSHA violations, employment discrimination, environmental pollution and accounting irregularities, but this does not prevent access to such documents by the public. Nevertheless, on the question of the exact format for such posting, the Public Staff stated that it would be willing to assist the companies in preparing a suitable format for presenting the information.

The Public Staff did not file a Reply Brief.

ITF maintained that the carriers' service quality information cannot be disclosed publicly because it is a trade secret under North Carolina law. The ITF cited to G.S. 66-152(3) which defines a trade secret as "business or technical information, including but not limited to a...program...compilation of information...or process that: a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development...by persons who can obtain economic value from its disclosure or use; and b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Obviously, the information is business or technical information. It also has commercial or economic value, because competing carriers can use the information in numerous ways, such as to tout their superiority, to disparage their competitors, or to strategically plan where, when, and how to compete with a rival. Moreover, the service quality data that the Public Staff proposes to post may be prove more misleading than helpful to the consumer. ITF also maintained that the information falls squarely within the ruling and principles in MCI, and that the carriers make reasonable efforts to maintain the secrecy of such information.

ITF denied that the service information submitted in compliance with the Commission rules is not the "property" of the carriers as required under G.S. 132-1.2(1)b because it is prepared at the Commission's request, as the Attorney General suggested. Information compiled by a utility does not become the "property" of the Commission simply because it is filed with the Commission. This would lead to the absurd result that any information, however sensitive, submitted to an agency could be revealed; it would eviscerate the trade secret protection. ITF also rejected the Attorney General's analysis of SETA UNC-CH v. Huffines, 101 N.C. App. 292, 399 S.E.2d 340 (1991) (Huffines), where the Court determined that portions of an application for approval to conduct animal experiments submitted for review by a Committee addressing the use of animals in scientific experiments were not trade secrets because the applications were "so general in nature as to reveal nothing to others." In the instant case, the information does not "reveal nothing," but, on the contrary, would be highly useful to competitors. The other non-North Carolina authorities cited by the Attorney General are inapposite because, among other things, they address the duty of courts to make public information submitted in evidence in judicial disputes. The Commission obtains the service information in its legislative and administrative capacity, not in its adjudicatory capacity.

In Reply Comments, ITF critiqued the Public Staff recommendations regarding website posting, arguing that such reports would at best be incomplete and potentially misleading. ITF stated that the Public Staff had essentially relied on the same "public interest" rationale that had been rejected in MCI. ITF also faulted the Public Staff's reliance on Wilmington Star-News, which the ITF said the Public Staff cited without analyzing. Analysis of the factors cited by the Court in that case supports the ITF's position, not that of the Public Staff. Public disclosure of information affecting a company's reputation has palpable economic consequences, and this is the touchstone of a trade secret analysis.

SELF-EFFECTUATING PENALTIES

Attorney General argued that self-effectuating penalties are in the public interest, and that it is not unusual for agencies and courts to require 100% compliance with a rule. Such penalties do not constitute a "taking."

In Reply Comments, the Attorney General chided the ITF for not conceding that Rule R9-8 does not incorporate "absolute requirements," inasmuch as the Rule requires that the carriers "shall perform and provide service" in accordance with its provisions. The Attorney General concurred with the Public Staff that the Commission has the authority to impose bill credit requirements to ensure adequate quality of service. It also has the authority to impose penalties under G.S. 62-310. The Attorney General disagreed with the ITF that it must first be proved that the carrier willfully or intentionally violated the rule. The due process arguments of the ITF are similarly without merit. As long as the carrier is telling the truth in its reports, the report will conclusively show whether a carrier has violated Rule R9-8 or not. Thus, the Public Staff's proposal for imposing penalties for violations of Rule R9-8 will not result in decision that would be arbitrary or capricious. See, e.g., McNeill v. Harnett County, 327 N.C. 552, 564, 398 S.E.2d 475 (1990) (due process imposes flexible restraints on the exercise of state power which are satisfied if the act in question is not unreasonable, arbitrary, or capricious and the means selected have a real and substantial relation to the goal sought). In any event, a carrier can request a hearing and seek a waiver of penalties for good cause. Since, under the Public Staff proposal, carriers could elect to provide compensation to all of its customers in the form of bill credits or to pay penalties directly to the state, these would be options that the carrier would be free to exercise at its own discretion. Therefore, the issue of whether the Commission has the authority to require a carrier to pay such compensation is irrelevant because the carrier would have an option as opposed to the imposition of a requirement.

Public Staff noted that the only question now on the table related to its recommendation that the Commission revise Rule R9-8 to require the issuance of bill credits whenever local service providers fail to provide adequate service at or better than the benchmark performance for the following objectives: Out-of-service troubles cleared within 24 hours; regular service not completed within 5 working days; new service installation appointments not met for company reasons; and new service held orders not completed within 30 days. The Public Staff noted that it had abandoned its suggestion that the Commission require local providers to furnish alternative service for those out of service for an extended period or who fail to receive service within a reasonable time frame.

The Public Staff stated that, although it had characterized the issuance of bill credits as a form of penalty, a better characterization is that they are rate adjustments or rebates because of inadequate service, reflecting the principle that reasonable rates and adequate service go hand in hand. Many ILEC tariffs already provide for bill credits for service outages exceeding 24 hours. The Commission has adequate authority to impose such requirements and, to that end, the Public Staff recommended that the bill credit provisions contained in Appendix A of its filing be added to Rule R9-8 and that the companies be required to amend their tariffs accordingly, except where existing tariff provisions already require a larger credit. The Public Staff cited to G.S. 62-32 (Commission has general supervisory authority over rates and services and has power to require reasonable service and rates), G.S. 62-131 (rates to be just and reasonable and service adequate, efficient and reasonable (applicable to non-price plan companies)), and G.S. 62-133.5(a) (price plan must reasonably assure the continuation of basic local exchange service that meet reasonable service standards) as authority for the Commission imposing a bill credit requirement.

The Public Staff observed that the self-enforcing penalty mechanisms in some price regulation plans require credits on the service bills of each residence and business customer and thus serve as compensation for inadequate service rather than as penalties in the Constitutional sense. All companies operating under price plans should be subject to self-effectuating enforcement mechanisms as part of the trade-off for pricing flexibility. If it is found that the Commission lacks authority to impose such a mechanism without a company's consent, the price plan companies should be allowed to choose between issuing bill credits and being liable for penalties as set out in Appendix B of the Public Staff's filing. Since the service objectives are applied uniformly, and if the companies follow these procedures and report the results accurately, there should be little in the way of adjudicative-type facts in dispute and thus little need for a trial-type hearing for each company to determine whether the company has performed in accordance with the service objectives. The circumstances surrounding the service quality objectives make it appropriate for the Commission to use a rulemaking procedure for enforcement. See, State ex. rel. Utilities Commission v. Nantahala Power & Light Company, 325 N.C. 190, 388 S.E. 2d. 118 (1980) (Commission acted within statutory authority in using rulemaking procedure rather than rate case or complaint proceeding to effectuate passing on of tax savings).

Accordingly, the Public Staff recommended that the enforcement provisions contained in its Appendix B be added to Rule R9-8 to allow any company not subject to a self-enforcing mechanism requiring bill credits in a price plan to choose between a self-effectuating enforcement mechanism requiring bill credits or a set of uniform penalties that would be self-effectuating to the extent the companies pay them voluntarily without evidentiary hearing or an action in Superior Court. The Public Staff also recommended that CLPs be exempt from both the bill credit and penalty provisions of the rule since, among other points, CLPs do not file tariffs or even price lists and, if CLP service is unsatisfactory, the customer can return to the carrier of last resort.

The Public Staff did not file a Reply Brief but confirmed that it did not propose that CLPs be included in sections (f) through (i) of its proposal.

ITF argued that the Commission cannot impose summary financial penalties by requiring carriers to issue bill credits or furnish alternative service. ITF pointed out that failure to achieve perfection in the provision of service does not equate to inadequate service, and it maintained that Chapter 62 doe not authorize mandatory financial penalties under the circumstances proposed by the Public Staff. The Commission only has those powers granted to it by the General Assembly, and those powers do not include the levying of summary fines or other penalties for failure to meet service objectives. The Commission's primary statutory authorization to require service improvements is under G.S. 62-42 which states that, when the Commission finds inadequate service, the Commission can require adequate service after notice and hearing. Even where no competition exists, the Commission has recognized that the responsibility to rectify problems rests in the first instance with the utility and only when the utility is unwilling or unable to solve the problem does the Commission involve itself with remedies. Even in the rate case context, where the Commission has had latitude to penalize companies through rate adjustments, its ability to do so was strictly circumscribed. The Commission may impose financial penalties but only in limited circumstances pursuant to G.S. 62-310(a)--which are for violations of statutes and refusal to conform to or to obey the rules, orders and regulations of the Commission. Financial penalties are only authorized for willful conduct in defiance of a Commission rule, order or regulation. Without any evidence of willfulness, the financial penalties do not apply.

The Public Staff's proposal does not include in inquiry into willfulness, nor is the utility to be given an opportunity to defend itself and explain why it may have missed a service standard. The Commission cannot itself impose a penalty. Imposition of a penalty requires a petition to the Superior Court. These mandatory penalties should be contrasted with payments to end users required under Rule R20-1, concerning slamming. In slamming, the carrier being accused of wrong-doing has the opportunity to demonstrate that the change in carriers was authorized.

In Reply Comments, the ITF noted that the Public Staff proposal at this point applies only to ILECs. The ITF rejected the Public Staff's characterization of the bill credits as not being a form of penalty but rather as compensation for inadequate service and contended that the terminology used to describe payments does not affect the legal analysis, because it does not alter its punitive nature. The ITF contended that all ILECs and CLPs already compensate customers for service interruptions through pro rata bill credits and to require additional payments for service outages is not compensation but is similar to liquidated damages. There is no real choice between bill credits and payments to the State because no rational ILEC would choose to pay twice as much as a "penalty" for the same asserted violation. The ITF, in reviewing applicable law, observed that the Commission lacks the power to assess damages and that its penalty authority derives from G.S. 62-310. ITF contended that the Public Staff's penalty proposals exceed the Commission's statutory authority. The ratemaking and rate case precedents cited for rate adjustments for inadequate service are inapposite because those provisions do not apply to price-regulated carriers that are the primary target of the Public Staff's proposed rule revisions. The ITF further maintained that, even if the Commission has the statutory authority to impose monetary penalties for missing service objectives, adopting the proposed rule changes would be arbitrary and capricious, since they are not based on any evidence or even allegation of service quality problems in the industry and apply only to ILECs. The ITF insisted that an evidentiary hearing is necessary to further consider the Public Staff's proposed rule revisions to examine the burdensome and expensive nature and impossibility of performance of certain of the proposals.

FURTHER COMMENTS AND REPLY COMMENTS REGARDING WEBSITE REPORTING

Attorney General, after meeting with the Public Staff, revised his proposal concerning website reporting and suggested that the Commission should publish on its website the service quality standards set forth in Rule R9-8, accompanied by a checklist showing whether each local exchange company has complied with the standard during each of the previous twelve months. In addition, the Commission would publish, as part of its checklists, the amount of penalties each company paid during the recent penalty period. The Public Staff would assist the Commission in preparing the compliance checklists and the yes/no determination of compliance, for checklist purposes, would be based upon a company's compliance with the service quality standards throughout the company's entire region. If a consumer wanted to obtain compliance information for a particular exchange served by a company, the consumer could contact the Public Staff to obtain additional information.

The compliance checklists would not constitute a pure grading system since no letter grades would be assigned. However, consumers would have information that would enable them to make informed decisions based upon their service quality preferences. Posting compliance over a twelve-month period would provide a broad picture of the company's compliance on a sustained basis.

Publication of the compliance checklists would be consistent with the Public Records Act. The checklists would be formulated by the Commission in connection with the transaction of public business. They would not constitute trade secrets because they would not be the property of private persons, nor would they be disclosed or furnished to the Commission by a company. Put simply, an agency does not reveal a trade secret of a company when it states whether a company has complied with its rules. The Attorney General continues to believe that the Commission should also post the raw service quality data for each of the local companies on its web page.

In his Reply Comments, the Attorney General emphasized that the burden of proof is on the party seeking to deny access on the basis of a trade secret claim to prove that all of the statutory criteria are met, something that the ITF has failed to do. The Attorney General argued that the information in question would not be the property of a private person because the compliance checklists would be prepared by the Commission or Public Staff and are not property of the carrier simply because the Commission has used data provided by the carrier. Likewise, such information would not be disclosed or furnished to the Commission at the time of disclosure or be designated as confidential at the time of disclosure. Taken to its logical extreme, the ITF's arguments would prevent the Commission from issuing a public order in an individual docket finding that a carrier is not in compliance with the Commission's rules if the Commission's conclusion was based in part on data provided by the carrier. The Attorney General also argued that the Commission should, as a matter of policy, publish service quality information on its web page.

Public Staff, filing in this round only Reply Comments, supported the Attorney General's proposals, reinforcing its view that the posting of service quality data filed pursuant to Commission Orders would not violate the Public Records Act and would be in the public interest. Service quality reports are distinguishable from access line reports because the service quality reports are collected by the companies on behalf of the Commission for oversight purposes rather than for their own use. Such information eventually becomes public knowledge by its very nature.

ITF renewed its request for the Commission to adopt the recommendations of the ITF and the GCG filed on November 20, 2001 or, in the alternative, the Uniform Measurement Procedures filed by the ITF on June 21, 2000. The ITF opposed the Attorney General's letter grade proposal, arguing that it will not avoid the trade secret question because the letter grades would be derived from the carriers' confidentially filed service quality reports. The ITF reiterated that a service quality compliance report meets the statutory standard for being a trade secret because it derives independent actual or potential commercial value from not being known or readily ascertainable through independent development by persons who can obtain economic value from its disclosure or use. The ITF has demonstrated that the service quality reports meet the six criteria outlined by the North Carolina Court of Appeals in MCI. The information at issue has substantial commercial and economic value because it could (and is intended to) prompt individuals to choose one carrier over another and would be useful to competitors in developing business and marketing strategies. With respect to restaurant inspections, the ITF rejected the Attorney General's analogy. Restaurant inspection grades cannot be trade secrets because the General Assembly has specifically decreed that they be publicly posted. The various cases cited by the Attorney General are inapposite, being from federal court and addressing whether it was proper to place particular court records under seal. The one North Carolina case, Huffines, does address the trade secret exemption but does not support the Attorney General's arguments because the information sought to be protected in that case was nothing like the detailed service quality data at issue here, which would be useful to competitors in many ways. Service quality information is more directly analogous to CLP access line information, which the North Carolina Court of Appeals ruled was protected.

CONCLUSIONS – LEGAL ISSUES

The Commission finds that it is appropriate to concentrate on adequate self-effectuating penalties under the various price regulation plans at this point in time in preference to a universal self-effectuating penalty or bill credit mechanism that would be applicable to all ILECs. The Commission also finds that it can require ILECs and CLPs to post on their websites a pass/fail statement regarding each of the Rule R9-8 requirements, together with the amount of penalties levied against them or credits or refunds required of them with citation to that part of Rule R9-8 which gave rise to the penalty, credit, or refund. The Public Staff is requested to make a similar website posting. The Commission will provide a prominent link to this information on its own website.

1. Self-Effectuating Penalties

With respect to the issue of self-effectuating penalties, it is uncontested--or at least it should be--that the Commission has the power in appropriate circumstances to require penalties or bill credits, which are in the nature of refunds. The issue before the Commission pertains rather to what degree the Commission can streamline the process with a view toward greater efficiency and accountability with respect to service quality without running afoul of due process and fairness considerations. There have been many able and interesting arguments advanced on both sides of this question. The zeal of the Public Staff and Attorney General for a comprehensive and aggressive regime has been met by a corresponding spirit of adamant resistance on the part of the ITF.

After exhaustively reviewing the proposals and arguments advanced, the Commission is concerned that an overly ambitious approach by the Commission, whatever its abstract merits, could lead to years of argument and litigation. We are therefore constrained to ask: What approach makes the most sense from a practical point of view? Practicality points to an approach which is legally highly defensible, indeed is already in place with respect to two of the largest companies, and which addresses the companies with the largest number of customers where the problems with service quality have by and large been most acute. In other words, practicality suggests that the Commission should concentrate on implementing its previous statement in Orders concerning the price plan dockets that satisfactory self-effectuating penalty provisions are viewed by the Commission to be integral to the price plans. This is another way of saying that the Commission views a self-effectuating penalty mechanism to be a central element in whether a proposed price plan is in the public interest. (Indeed, it is hard to think of a specific item in a price plan that is more bound up with the public interest than service quality.) Since a company up for a new price plan or price plan review would voluntarily accept the self-effectuating penalty mechanism as part of the price plan, it could not be heard to object to the principle of such a provision on due process grounds, although the precise terms of such mechanism will surely be subject to lively debate.

2. Website Reporting

With respect to website reporting, the Commission notes that this proposal has evolved from a restaurant-style posting requirement to a posting on a Public Staff or Commission website of a pass/fail statement every quarter as to the individual Rule R9-8 requirements together with a statement as to penalties levied against a company for service quality violations. The Attorney General also proposed the posting of "raw" service quality data. The rationale behind the Attorney General's proposal for posting such information on the Commission or Public Staff website is that, in so doing, the information is no longer the "property of a private 'person'" as required by G.S. 132-1.2(1)b. This is one of the elements constituting a trade secret.

At this point, it is useful to recall the applicable law. G.S. 132-1.2 states that the Public Records Act "shall not be construed to require or authorize a public agency...to disclose any information" that meets the following conditions: (1) it is a trade secret as defined by G.S. 66-152(3); (2) it is the property of a private person; (3) it is disclosed to a public agency pursuant to public contract, law, or regulation; and (4) it is designated as confidential or a trade secret at the time of initial disclosure to the public agency. G.S. 66-152(3) defines a "trade secret" as "business or technical information (including a compilation of information) that "derives actual or potential commercial value from not being known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use" and is subject to reasonable efforts to maintain its secrecy.

It is therefore readily apparent that one of the important elements in determining whether certain information is a trade secret is whether it has "actual or potential" commercial value from not being known by people who can obtain economic value "from its disclosure or use." Furthermore, the North Carolina Court of Appeals in MCI has limited this Commission (and by extension other agencies dealing with regulation of business) to the strict letter of the law by stating that the Public Records Act "did not make any distinction with respect to its application to regulated industries." Thus, the Commission does not have the ability under its "broad supervisory powers" to require disclosure of information that "otherwise qualifies under section 132.1.2." Absent a specific authorizing statute (such as for public health departments in the case of restaurant postings), the Commission does not have the power to require disclosure because it believes that such disclosure serves public policy, if the information otherwise qualifies as a trade secret. This is unfortunate because the Commission views the disclosure of service quality information to be very much in the public interest.

The question then is whether the information that the Attorney General seeks to have disclosed is a trade secret according to the provisions of the law. The Attorney General disputes that the information in question meets any of the criteria, and his arguments are mainly based on what might be called a theory of transmutation. It is conceded that the companies provide the information, but the argument apparently is that, because the Commission or Public Staff arranges the information in a different form, it is no longer the companies' property but becomes that of the Commission--therefore, the other elements do not matter. This argument, fails however, because the origin of the data is important. It is very unclear how such data, simply by the fact of submission to the public agency and minimal rearrangement, transmutes into the agency's property for the purposes of the trade secret law. The fact is that the companies have taken care to assert the confidentiality of quality of service data which they originated upon submission to the public agency from which these reports are derived. It also seems relatively obvious that the quality of service information possesses economic and commercial value from not being generally known or inferable, both as to customers making choices and competitors framing competitive strategies. Furthermore, the extreme of the transmutation argument--that submission to and transmutation by a public agency at the granular level of its choosing converts the information from private property to public property and thereby makes such information liable for disclosure--cannot be sustained. It would have the effect to negating the trade secrets law because any information, however sensitive, by that argument could ipso facto be converted by that method into public information subject to disclosure simply by changing its format.

Nevertheless, although the Attorney General's transmutation theory is weak by itself (and is further weakened by the proposed inclusion of raw data), in proposing a pass/fail statement on the Public Staff or Commission website, the Attorney General has taken a step to abstracting the data. This is an important point because abstracting data to a sufficient degree, as opposed to simply transmuting the data into another format, is a way for an agency to convey information without running afoul of the trade secrets protection. One can visualize a continuum. At the one end, there is the raw data specific to a company. Plainly, this would be the most likely to be a trade secret. At the other end, there is a conflation of data representing the entire pool of companies such that no individual company's performance can be identified ("reverse engineered," so to speak). Equally plainly, this would not be likely to be a trade secret. The difficulty, of course, is in assessing the great in-between.

Is the publication of a pass/fail statement a violation of the trade secret protection? The question is a closer one than the examples given above. On the one side, the opponents of disclosure could argue that the pass/fail information is derived from protected information and is being published in a way that is specific to a company and which demonstrates whether a specific mathematical standard has been reached. They could also urge that the publication of the information would lead to the same commercial or economic harm that the publication of more detailed information would lead to. Proponents of disclosure could argue that the pass/fail grade does not convey the precise information from which the actual quantitative information which is reported can be inferred. Whether economic or commercial harm would result is irrelevant because the information has been sufficiently abstracted so as to no longer constitute a trade secret. If the pass/fail information is not a trade secret, there can, moreover, be no objection to having a company posting this information on its own website.

The Commission believes that, on balance, the proponents of disclosure have the better case. The Commission believes that the degree of abstraction in the pass/fail model, such that the specific information is not released, is sufficient to allow for disclosure.

The Attorney General has also suggested that the Commission or Public Staff post penalties that have been levied against violators of quality of service standards. This puts the question on a different plane than the example above, because this requirement would not be applicable as a matter of course to all relevant companies but only to those who are the subject of an enforcement process. Thus, it may actually furnish at least a partial release from the trade secret conundrum, because there are both legal and strong public policy reasons which favor the publication of the results of the judicial and administrative enforcement process. See, e.g., Article I, Sec. 18 (Courts shall be open); Article IV, Sec. 3 (Judicial powers of administrative agencies); G.S. 62-60 (Commission deemed to exercise judicial functions in certain circumstances). A posting requirement of penalties paid should apply with equal force to a company which has voluntarily adopted self-effectuating penalties in the context of a price regulation plan. The Commission furthermore sees no necessary or convincing legal impediment to requiring companies to post on their own websites whether or not they have been assessed penalties for quality of service violations, the nature of such violations, and the amount assessed in addition to the pass/fail information.

It would, however, be useful for the Public Staff to provide independent posting of both the pass/fail and the penalties information on its website so that all this information can be gathered in one place. The Commission will provide a prominent link to this information on its own website.

SECTION III – REMAINING ISSUES

On October 8, 2002, the ITF filed its Petition for Modification of Rule R9-8 or, in the Alternative, Motion for Hearing. The Commission notes that written reports and filings have been received in this docket since 2001 in anticipation of having adequate evidence to make decisions regarding Rule R9-8 without an evidentiary hearing. The Commission believes that for the vast majority of issues in this docket the written filings provide adequate evidence and that we should make decisions regarding Rule R9-8 for the majority of issues without an evidentiary hearing. For the majority of issues presented below, the Commission finds it appropriate to deny the ITF's Motion for Hearing and decide the issues in this docket based on the substantial written record. The only issues the Commission believes should be the subject of an evidentiary hearing concern (1) the appropriate uniform reporting procedures for the four answertime objectives: Operator "O" answertime, directory assistance answertime, business office answertime, and repair service answertime; and (2) an appropriate absolute maximum answertime for Business Office and Repair Service. The Commission notes that this conclusion is discussed in greater detail in Issue Nos. 1 and 4 below.

The Commission notes that the following issues need to be addressed and decided in this docket:

ISSUE NO. 1 What are the appropriate measures and standards for Commission Rule R9-8? (Pages 36-60)

ISSUE NO. 2 Should any additional measures be added to Commission Rule R9-8? (Page 61)

ISSUE NO. 3 Is it appropriate to include a Force Majeure Clause in Commission Rule R9-8? (Pages 61-65)

ISSUE NO. 4 What are the appropriate uniform reporting procedures? (Pages 65-94)

ISSUE NO. 5 Should the service objectives outlined in Commission Rule R9-8 be applicable only to residential services? (Pages 94-99)

ISSUE NO. 6 Should companies report data only after a certain threshold level of customer complaints are filed with the Consumer Services Division of the Public Staff? (Pages 99-102)

ISSUE NO. 7 Should companies report data for certain measures at the exchange and/or wire center level? (Pages 102-105)

ISSUE NO. 8 Should companies file an electronic copy as well as a hard copy of the service objective results? (Page 105-106)

ISSUE NO. 9 Should companies be required to retain records to support their service objective results for one year? (Page 105-106)

ISSUE NO. 10 Are the Public Staff's Directory Assistance (DA) recommendations reasonable and appropriate? (Pages 106-116)

▶ **ISSUE NO. 1: What are the appropriate measures and standards for Commission Rule R9-8?**

The following chart compares the recommendations of the GCG/ITF and the Public Staff concerning the appropriate standards for Rule R9-8:

Measure No.	Description	GCG/ITF's Proposed Standard	Public Staff's Proposed Standard
1	Intraoffice Completion Rate	Eliminate	99% or more
2	Interoffice Completion Rate	Eliminate	98% or more
3	Direct Distance Completion Rate	Eliminate	95% or more
4	EAS Transmission Loss	Eliminate	95% or more between 2 and 10 dB
5	Intrastate Toll Transmission Loss	Eliminate	95% or more between 3 and 12 dB
Measure No.	Description	GCG/ITF's Proposed Standard	Public Staff's Proposed Standard
6	EAS Trunk Noise	Eliminate	95% or more 30 dBrnc or less
7	Intrastate Toll Trunk Noise	Eliminate	95% or more 33 dBrnc or less
8	Operator "O" Answertime	7.8 second average answertime	90% or more within 10 seconds
9	Directory Assistance Answertime	Eliminate; in the alternative, 16 second average answertime	85% or more calls directed to a live operator are answered within 10 seconds
10	Business Office Answertime	Eliminate; in the alternative, 60 second average answertime	90% or more calls directed to a live business office representative are answered within 20 seconds
11	Repair Service Answertime	Eliminate; in the alternative, 60 second average answertime	90% or more calls directed to a live repair service representative are answered within 20 seconds
12	Initial Customer Trouble Reports	4.75 or less per 100 access lines	4.75 or less per 100 total access lines
13	Repeat Reports	1.0 report or less per 100 access lines	1.0 report or less per 100 total access lines
14	Out-of-Service Troubles Cleared within 24 Hours	90% or more	95% or more
15	Regular Service Orders Completed within 5 Working Days	90% or more	90% or more
16	New Service Installation Appointments Not Met for Company Reasons	5% or less	5% or less
17	New Service Held Orders Not Completed within 30 days	0.1% or less of total access lines	0.1% or less of total access lines

As the chart above details, the ITF and the Public Staff generally agree to keep the current standards in effect in Rule R9-8 for the following measures:

- Initial Customer Trouble Reports
- Repeat Reports
- Regular Service Orders Completed within 5 Working Days
- New Service Installation Appointments Not Met for Company Reasons
- New Service Held Orders Not Completed Within 30 Days

The following is a measure-by-measure discussion reflecting: (1) the ITF/GCG's position; (2) the Public Staff's position; and (3) the Commission's Discussion and Conclusions:

Measure (1): Intraoffice Completion Rate – currently 99% or more
Measure (2): Interoffice Completion Rate – currently 98% or more
Measure (3): Direct Distance Dialing Completion Rate – currently 95% or more

Measure (4): EAS Transmission Loss – currently 95% or more between 2 and 10dB
Measure (5): Intrastate Toll Transmission Loss – currently 95% or more between 3 and 12 dB
Measure (6): EAS Trunk Noise – currently 95% or more 30 dBmc or less
Measure (7): Intrastate Toll Trunk Noise – currently 95% or more 33 dBmc or less

GCG/ITF: In the November 30, 2001 Final Report of the ITF, the GCG proposed that the Commission delete the Commission Rule R9-8 standards pertaining to intraoffice completion rate, direct distance dialing completion rate, transmission loss, and trunk noise.

The ITF noted in its May 31, 2002 filing that the Public Staff recommended that the Commission should retain the first seven objectives of Rule R9-8, which regulate call completion rates, transmission losses, and trunk noise levels. The ITF made no recommendation with respect to these objectives. However, the ITF stated that it is worthwhile to point out that these standards are not relevant for digital services, so it is pointless to require carriers with fully digital technology to continue reporting on these measures. In addition, the ITF argued that there has been no showing of any compliance problems with regard to these measures. The ITF noted that the Public Staff cited "occasional complaints", but provided no data as to what they were about, how many there were, or whether they were justified. The ITF maintained that in the absence of any proof that these objectives are linked to customers' service quality perceptions, they are worthwhile candidates for elimination or at least a liberal waiver policy.

In Attachment A to its October 8, 2002 filing, the ITF proposed that these seven measures be deleted from Rule R9-8.

PUBLIC STAFF: The Public Staff noted in its April 5, 2002 filing that the ITF contended that companies have no compliance problems with these objectives in the current digital/fiber optic network environment, but the ITF did not specifically propose in its Final Report that they be eliminated. The Public Staff maintained that the Commission has eliminated the requirement that companies file monthly performance reports on these objectives, but they still remain in effect. Based on the occasional complaints, the Public Staff stated that it believes that trunk blocking, transmission level, and noise problems do occur from time to time and that the continued presence of these seven objectives in the Commission's Rules will serve as a reminder of the need to maintain adequate service in these areas. The Public Staff recommended that the Commission retain the first seven objectives of Rule R9-8 without changes but not require monthly reports on these objectives at this time.

DISCUSSION

The Commission agrees with the Public Staff that it is appropriate to not remove these seven measures from Rule R9-8. The Commission does not believe that the ITF provided sufficient evidence to warrant removal of these seven measures. In addition, the Commission notes that under the current reporting requirements, companies are not obligated to report these measures to the Commission on a monthly basis although they remain in Rule R9-8. The Commission agrees with the Public Staff that retaining these measures in Rule R9-8 will serve as a reminder of the need for carriers to maintain adequate service in these areas.

Further, the Commission notes that Florida currently has rules in place concerning call completion (Rule 25 – 4.071(2)), transmission losses (Rule 25 – 4.072(1)), and noise levels (Rule 25 – 4.072(1)).

Based upon the foregoing, the Commission finds it appropriate to not remove the following measures from Rule R9-8:

Measure (1): Intraoffice Completion Rate – currently 99% or more
Measure (2): Interoffice Completion Rate – currently 98% or more
Measure (3): Direct Distance Dialing Completion Rate – currently 95% or more
Measure (4): EAS Transmission Loss – currently 95% or more between 2 and 10dB
Measure (5): Intrastate Toll Transmission Loss – currently 95% or more between 3 and 12 dB
Measure (6): EAS Trunk Noise – currently 95% or more 30 dBmc or less
Measure (7): Intrastate Toll Trunk Noise – currently 95% or more 33 dBmc or less

COMMISSION CONCLUSIONS: The Commission finds it appropriate to retain Measures 1-7 in Rule R9-8, however carriers are not required to provide monthly reports on the results of the measures.

Measure (8): Operator "O" Answertime – current standard of 90% or more within 10 seconds or an EAA in seconds

GCG/ITF: In the November 30, 2001 ITF Final Report, the GCG argued that the Commission should lengthen the Operator "O" answertime standard to reflect an average answertime goal of 7.8 seconds. The GCG noted that the existing 90%-in-10 second standard for North Carolina results in an equivalent average answertime of 3.1 seconds for BellSouth. The GCG provided the following tables to summarize the results of its survey of standards set by other state regulatory bodies, which the GCG attached as Appendix 1 to its Report. The GCG noted that standards have been set in two ways: (a) % of calls answered in less than an established number of seconds and (b) average answertime for all calls.

The GCG noted that the following table summarizes the statistics for those states utilizing a percentage of calls answered for Operator "O" Answertime:

Operator "O" Answertime

Number of Commissions	*Percentage of Calls*	*Seconds*
1	*100%*	*6*
1	*100%*	*10*
▶ *11 (includes NC)*	*90%*	*10*
9	*85%*	*10*
1	*80%*	*10*
1	*95%*	*15*
1	*80%*	*20*
1	*90%*	*30*
20	*No Operator "O" Standard*	*No Operator "O" Standard*
Total: 46		

The GCG noted that the survey also establishes that a number of jurisdictions utilize an average answertime standard that ranges from a low of 2.5 seconds to a high of 20 seconds:

Average Answertime Standards
Operator "O" Answertime

Number of Commissions	Average Seconds Answertime Standard
1	2.5 seconds
1	2.8 seconds
1	3.3 seconds
1	3.6 seconds
1	5.0 seconds
1	7.7 seconds
1	8.0 seconds
2	4.0 seconds
2	10.0 seconds
2	20.0 seconds
Average	**7.8 seconds**
Total: 13	

The GCG noted that its examination of states that have recently visited the issue of service quality standards indicates the following:

Recently Revised Standards
Operator "O" Answertime

Number of Commissions	Standard
7	No standard identified
1	80% in 10 seconds
3	85% in 10 seconds
1	80% in 20 seconds
2	90% in 10 seconds
1	10 second average
1	20 second average
1 – proposed	20 second average
Total: 17	

The GCG noted that based on the principle that regulation should be withdrawing in favor of competition, on the significant number of jurisdictions for which no operator "O" service standard was identified, and the not insignificant number of jurisdictions that impose a standard that is more relaxed than the 90%-in-10 second standard presently utilized in North Carolina, the GCG recommended that the Commission relax this standard. The GCG recommended that the Commission adopt an average answertime requirement of 7.8 seconds, which is the average for those commissions utilizing an average answertime standard. The GCG stated that the Commission should note that 7.8 seconds is a little more than a single ring of a telephone (six seconds, consisting of a two second ring and a four second interval between rings). The GCG maintained that under any circumstance, a response within one or two rings of the telephone should be considered excellent.

PUBLIC STAFF: The Public Staff recommended that the Commission not alter the standard for Operator "O" Answertime thereby leaving the standard as 90% or more calls answered within 10 seconds.

DISCUSSION

The Commission believes that the Operator "O" answertime measurement is a useful and necessary standard. The information presented by the GCG/ITF does not persuade the Commission that the objective should be relaxed. In fact, the information provided by the ITF notes that 12 other states (or 24% of all states) have an Operator "O" answertime objective that is the same as or more stringent than the current Rule R9-8 standard of 90% or more calls answered within 10 seconds. The Commission also notes that the Public Staff has recommended that the Commission not alter the current objective for this measure.

The Commission also notes that Operator services are reflected in the Non-Basic 1 basket of the price regulation plans in which pricing restraints are placed on the services since they have not been deemed to be fully competitive.

The Commission finds it appropriate to not alter the standard for Operator "O" answertime and retain the current standard of 90% or more of calls answered within 10 seconds.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to not alter the standard for Operator "O" answertime and retain the current standard of 90% or more of calls answered within 10 seconds.

Measure (9): Directory Assistance Answertime – current standard is 85% or more within 10 seconds or an EAA in seconds

GCG/ITF: In the November 30, 2001 ITF Final Report, the GCG argued that the Commission should decline to regulate or set quality or any other standard for services that it finds to be competitive or for which there are adequate service alternatives. Accordingly, the GCG maintained that the Commission should consider eliminating the directory assistance answertime standard. The GCG stated that the reasons for this recommendation are:

- directory assistance is a service from numerous providers;
- directory assistance has been deregulated in some other jurisdictions; and
- free directory assistance service is available over the Internet.

The GCG noted that the FCC, in its *Third Report and Order and Fourth Further Notice of Proposed Rulemaking* adopted September 15, 1999 in CC Docket No. 96-98, relaxed its earlier determination that required ILECs to provide unbundled access to directory assistance. The GCG noted that the FCC found that there was significant evidence of a wholesale market in the provision of operator and directory assistance services, and opportunities for self-providing these services. The GCG maintained that the significance of that finding is that it implies the existence of a competitive market for operator and directory assistance services. The GCG asserted that providers would have had no reason to develop that wholesale market if there were no opportunities to utilize the resulting services. The GCG noted that the FCC stated:

> Competition in the provision of operator services and directory assistance has existed since divestiture. Such competition has accelerated in the directory assistance market as a result of the Supreme Court's decision to allow copying of carriers' white pages listings in their entirety. For example, **according to SBC, more than 30 competitive LECs presently provide their own OS/DA services or resell the services of non-incumbent LECs.** In Bell Atlantic's region, **only 70 out of 400 interconnection agreements require Bell Atlantic to provide OS/DA as an unbundled network element.**

The GCG noted that in paragraph 449 of the same *Order*, the FCC noted declines in call volumes and the existence of multiple alternative providers of operator and directory assistance service providers:

> It appears that this increasing availability of competitive OS/DA providers coincides with a decrease in incumbent LEC OS/DA call volumes. Evidence in the record indicates that call volumes to incumbent OS/DA services have been declining steadily over the past few years. For example, SBC claims directory

> assistance call volumes have decreased almost 30 percent since 1995, and SBC operator-assisted calls have dropped by over 50 percent during the same period. Similarly, **BellSouth's operator-assisted call volumes have declined over 60 percent in the past eight years.** According to Bell Atlantic, it lost greater than 67 percent of its wholesale directory assistance calls between 1994 and 1998. In fact, Bell Atlantic claims that interexchange carriers accounted for over 68% of the operator services market in 1998 and represented 72% of the wholesale operator services market by 1997. This trend, combined with the number of alternative operator services and directory assistance providers outside the incumbent LECs' networks, strongly suggests that requesting carriers are not impaired without access to the incumbent LECs' OS/DA service. Significantly, we find that the existence of multiple alternative providers of OS/DA service in the marketplace, coupled with evidence of competitor's decreasing reliance on incumbent OS/DA services, demonstrates that requesting carriers' ability to provide the services it seeks to offer is not materially diminished without access to the incumbent's OS/DA service on an unbundled basis.

The GCG stated that the FCC is not the only jurisdiction to recognize the need to relax the directory assistance answertime standard. The GCG maintained that the Indiana Utility Regulatory Commission is in the process of enacting new service quality rules. The GCG noted that the operator and directory assistance standard had been an average of 7.7 seconds, or 80% within 10 seconds. The GCG stated that the draft new standard reflects an average speed of answer not to exceed 20 seconds.

The GCG noted that other commissions, including commissions in Iowa, Utah, New Jersey, Colorado, Connecticut, and Oklahoma have transferred directory assistance from noncompetitive to competitive categories. The GCG maintained that the Ohio Commission Staff proposed a 20 second answertime standard for directory assistance. The GCG commented that the Ohio Commission, while stating that it was not prepared, based on the record, to determine that operator and directory assistance services should be deemed competitive, determined that the appropriate answertime requirement was 30 seconds.

The GCG noted that in declining to establish a standard for directory assistance in October, 2000, the New York Public Service Commission stated:

> The proposed rules contain no provisions with respect to directory assistance, as adequate, competitive alternatives exist for end users from a number of statewide directory assistance providers. The alternatives include Verizon, AT&T, WorldCom, the internet, and other sources of information.

The GCG argued that at this time, the following companies are providing alternative directory assistance services to customers in North Carolina:

- Wireline: AT&T, Sprint, WorldCom, other smaller interexchange carriers and other ILECs and CLPs;

- Wireless: Metro One, InfoNXX, Verizon Wholesale, and CFW/Telegate

The GCG maintained that all of the above suggests that strong consideration should be given to, at most, monitoring of directory assistance answertimes, but not regulation of such times. The GCG stated that it also is worth noting that, among the alternatives available to directory assistance customers is free directory assistance over the Internet. The GCG commented that the Wisconsin Commission's website provides links to four free Internet-available directory assistance providers.

The GCG stated that the survey attached to its Report as Appendix 1 indicates that a number of commissions impose directory assistance answertime standards that are less stringent than the North Carolina 85%-in-10 seconds standard. The GCG noted that arranged in order, from most to least stringent, the table shows that 14 commissions utilize a standard that is less stringent than the North Carolina standard:

Directory Assistance Answertime

Number of Commissions	Percentage	Seconds
1	100%	6 seconds
1	100%	10 seconds
3	90%	10 seconds
▶ 9 (includes NC)	**85%**	**10 seconds**
6	80%	10 seconds
1	85%	12 seconds
1	95%	15 seconds
3	90%	20 seconds
1	80%	20 seconds
1	90%	30 seconds
1	80%	30 seconds
Total: 28		

The GCG noted that, in addition, no identifiable directory assistance answertime standard was found for 17 of the jurisdictions.

The GCG commented that the market is in a transition from regulation of all aspects of service to an eventual competitive environment. The GCG maintained that the "end game" should include no regulation of service quality. In the meantime, the GCG argued that similar to the FCC's proposed approach, the Commission may want to continue to require reporting of directory assistance answertimes, while imposing no standard, as a means of judging the response of the transitional competitive market to the removal of this standard. The GCG stated that if the Commission does not eliminate the Directory Assistance Answertime standard, it should give strong consideration to adopting an average answertime standard of 16 seconds. The GCG argued that this would result in an equivalent average answertime of approximately three rings.

PUBLIC STAFF: The Public Staff recommended that the Commission generally retain the current standard for directory assistance answertime of 85% or more of calls answered in 10 seconds, however it recommended that the standard specify that the 85% relates to calls directed to a live operator.

DISCUSSION

The Commission believes that the Directory Assistance answertime measurement is a useful and necessary standard. The Commission believes that DA is an important and familiar service provided by local service companies which will continue to be used although some other sources of DA are available. The information presented by the GCG/ITF does not persuade the Commission that the objective should be relaxed. In fact, the information provided by the ITF notes that 13 other states (or 26% of all states) have a Directory Assistance answertime objective that is the same as or more stringent than the current Rule R9-8 standard of 85% or more calls answered within 10 seconds. The Commission also notes that the Public Staff has recommended that the Commission not alter the current objective for this measure.

The Commission also notes that directory assistance services are reflected in the Basic and Non-Basic 1 baskets of the price regulation plans in which pricing restraints are placed on the services since they have not been deemed to be fully competitive.

The Commission finds it appropriate to not alter the standard for Directory Assistance answertime and to retain the current standard of 85% or more of calls answered within 10 seconds.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to not alter the standard for Directory Assistance answertime and retain the current standard of 85% or more of calls answered within 10 seconds.

Measure (10): Business Office Answertime – current standard is 90% or more answered within 20 seconds or an EAA in seconds;
Measure (11): Repair Service Answertime – current standard is 90% or more answered within 20 seconds or an EAA in seconds.

GCG/ITF: In the November 30, 2001 ITF Final Report, the GCG argued that the Commission should consider eliminating the business and repair office answertime standards. In the alternative, the GCG proposed that the Commission establish, not as a standard but as a goal, an average answertime of 60 seconds. Consistent with this goal recommendation, the GCG maintained that the Commission should monitor complaints relating to answertime to determine if this goal is an important factor in customers' perception of service quality. The GCG stated that its recommendations are based on a number of factors, including:

- The role that competition is playing in determining service quality, and the increasing role that it will play in allowing customers to indicate what is important and competitors to respond to such indications;

- Evolution of regulatory commission standards toward the relaxation and elimination of business/repair answertime standards; and

- Customer surveys made for this proceeding, which establish that resolution of the reason for the business/repair call is more important than answertime.

The GCG noted the importance of competition as a factor to be considered in this proceeding. The GCG stated that there is widespread recognition that the market, with customers selecting the options that they desire and with competitors seeking to discern what customers want and provide them, is the best system for establishing service quality and prices.

The GCG noted that in June, 2000, the Public Utility Commission of Oregon issued an order establishing minimum service quality standards relating to the provision of retail telecommunications services. The GCG observed that in its Order, the Ohio Commission recognized the role of competition in leading to the elimination of standards:

> The toll operator access time standard was deleted, because Staff believed that this feature was subject to competition and is regulated by the carrier providing this service.
>
> Generally, the commenters who argued for less restrictive service quality standards argued as well that competition should function to police the market and that poor service quality would cost a carrier business. The rules provide for relaxation of oversight once competition is established.

The GCG argued that customer satisfaction, which should be the ultimate goal of the Commission and of service providers, is a complex amalgam of many aspects of service including price, service variety, and quality. The GCG maintained that the Commission should promote competition and, increasingly, it should take a market monitoring role rather than a regulatory role. The GCG asserted that it should be anticipated that, in the future, the Bell Operating Companies will be providing long distance services, which can only be achieved after their own local markets have been opened sufficiently to competition to warrant Section 271 approval. The GCG maintained that this evolution to pervasive competition means that the Commission must understand that any rules adopted in this proceeding will have to be changed in the future. The GCG argued that the Commission should also recognize that changing rules is time consuming and that the continued application of rules that are inappropriate can hinder the development of the types of competition and services and quality that lead to true customer satisfaction. In this regard, the GCG noted that in its October 2000 Order, the New York Public Service Commission recognized this, saying:

> [A]s competition has been introduced into more markets and services, service quality for consumers has improved across the State. There is no evidence of a need to increase the regulatory burden on service providers, particularly when competition may provide consumers with benefits that ***increased regulatory requirements may preclude.*** [Emphasis added.]

The GCG asserted that in addition to considering the role of competition in "regulating" service quality and providing for customer satisfaction, the Commission should recognize that there is considerable diversity of opinion concerning the degree to which regulatory commissions consider business/repair office answertime to be an important factor in quality service. The GCG maintained that in the survey attached to its Report as Appendix 1, no business office answertime standard was identified for 22 jurisdictions, and 15 jurisdictions have no identifiable repair office answertime standard. The GCG noted that while those commissions have service quality standards, they do not have business/repair answertime standards, which suggests that they have not found this standard to be particularly relevant in providing for overall customer satisfaction.

The GCG noted that other regulatory commissions have relaxed their standards with respect to business/repair answertimes. The GCG maintained that in September 2000, the New York Public Service Commission issued an order in Case 97-C-0139 – Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies. The GCG noted that in that *Order*, the New York Commission set the service standard for business and repair office answertime at 80% in 30 seconds. The GCG stated that in reaching its decision, the New York Commission stated:

> The AG argues against the proposed lowering of business office and repair office answer time standards. In fact, we believe that **consumers will not notice the change in the standards**. This is based on analysis (during the collaborative phase of the proceeding) of a number of years of Verizon's performance data. Complaints are low when performance meets 80% answered in 30 seconds. To continue the existing answer time standards for business and repair offices is to place unreasonable and unnecessary costs on service providers for a level of service that consumers do not require.
>
> Our experience indicates that complaint levels reduce to nearly zero when Verizon was performing at 80% answered in 30 seconds as proposed in the adopted standards.

The GCG further noted that in May 2001, the Ohio Commission issued its *Order* in Case No. 00-1265-TP-ORD. The GCG noted that in that *Order*, the Ohio Commission adopted a 90 second standard for business and repair office answertimes, stating:

> Sprint and Verizon support the proposed changes relating to average speed of answers for the repair service center and the business office, as set forth in proposed Rule 4901:1-5-20(D)(1)(c) and (D)(1)(d), O.A.C (Sprint Initial Comments at 36; Verizon Initial Comments at 27). The proposed 90-second average speed of answer requirement for these types of calls represents a change from the 60-second speed of answer requirement set forth in the existing MTSS rule. Sprint claims that its research indicates that an average hold time of 90 seconds for the repair and business office is well within customer expectations.

The GCG further commented that the Michigan Public Service Commission has proposed new service quality standards to replace those that expired on September 1, 2001, but which were continued pursuant to interim order. The GCG noted that the repair answertime would be made less stringent in the new standard, with the current average answertime requirement of 25 seconds replaced by a required answer within 3 minutes.

The GCG stated that its survey of the standards applied by other commissions indicates that a significant number of the commissions for which data is available utilize a business office repair standard that is less stringent than the current North Carolina standard of 90% of calls answered in 20 seconds. The GCG provided the following table to summarize the business office standards that were identified, in order from most to least stringent:

Business Office Answertime

Number of Commissions	Percentage	Seconds
1	95%	15 seconds
▶ 9 (includes NC)	**90%**	**20 seconds**
6	85%	20 seconds
2	80%	20 seconds
1	70%	20 seconds
1	60%	20 seconds
2	80%	30 seconds
1	100%	60 seconds
Total: 23		

The GCG stated that in addition, for 22 jurisdictions, no business office answertime standard was identified.

The GCG maintained that the survey also indicates that more commissions utilize a repair service standard that is less stringent than the North Carolina standard of 90% in 20 seconds:

Repair Service Answertime

Number of Commissions	Percentage	Seconds
2	100%	6 seconds
1	85%	10 seconds
1	95%	15 seconds
▶ 7 (includes NC)	**90%**	**20 seconds**
8	85%	20 seconds
2	80%	20 seconds
Number of Commissions	**Percentage**	**Seconds**
2	75%	20 seconds
1	90%	30 seconds
2	81%	30 seconds
Total: 26		

In addition, the GCG noted, for 15 jurisdictions, no repair service answertime standard was identified.

The GCG argued that a final reason for questioning the value of business/repair answertimes as being a factor significant to customer satisfaction is the market survey of customers in North Carolina, recently performed by Maritz Market Research (MMR), designed to determine customer reactions to business and repair office answertimes. The GCG maintained that the results of this customer survey strongly support the proposition of at least relaxing the standard for business office and repair service answertime. The GCG noted that as supported by the study and the recent proceedings in New York and Ohio, a relaxation of the standards for these metrics does not appear to impact service or customer satisfaction. The GCG noted from the transcript of the hearings before the Commission on February 15, 2000 and September 6, 2001 that the North Carolina companies are taking several operational measures to satisfy customers that call the business office or repair service. The GCG argued that the evidence indicates that a reasonable increase in answer times does not lead to customer dissatisfaction. The GCG provided bar charts detailing the conclusions of the MMR survey (See pages 25-28 of the November 30, 2001 ITF Final Report).

The GCG stated that Chart 1 indicates that customers' overall satisfaction does not materially decrease as holding times increase to over 2 minutes, the longest time period evaluated. The GCG commented that at holding times in the last three time categories – 41 seconds to 1 minute, over 1 minute to 2 minutes and over 2 minutes, satisfaction is essentially at the same level, albeit reflecting a slight increase from the level measured in the 41 seconds to 1 minute interval. The GCG stated that this suggests that problems are being handled in a manner that results in a high level of customer satisfaction, even with answertimes in excess of 40 seconds.

The GCG stated that Chart 2 shows that customers' overall reaction to the time to answer calls to repair offices remains at high levels when the answertime extends to 60 seconds. The GCG maintained that when the answertime exceeds 1 minute, customers' reaction to repair office answertime declines slightly while, significantly as shown on Chart 1, customers' overall satisfaction does not.

The GCG stated that similar to Chart 1, Chart 3 indicates that customers' overall satisfaction does not materially decrease as holding times increase to over 2 minutes, the longest time period evaluated. The GCG commented that at all holding times out to 2 minutes, satisfaction is essentially at the same level. Again, the GCG stated that this suggests that customer satisfaction is more closely allied with resolution of problems than with holding times.

The GCG stated that Chart 4 shows that customers' overall reaction to the time to answer calls to business offices remains at high levels even when the answertime extends to 60 seconds. The GCG commented that for answertimes from 1 to 2 minutes, customers' reaction to repair office answertime declines slightly while, as shown on Chart 3, customers' overall satisfaction does not. The GCG maintained that this, too, suggests that the resolution of the matter necessitating the call to the business office is a more important factor than answertime, at least for answertimes out to 1 minute.

The GCG stated that in making this recommendation, it notes that its recommendations keep in place strong standards designed to ensure the ultimate resolution of the issues causing the customer to call the business or repair offices. The GCG stated that its recommendations leave unchanged the standards with respect to initial and repeat trouble reports, completion of regular service orders, meeting of installation appointments, and completion of new service held orders. The GCG noted that it recommends only a slight reduction in the standard with respect to clearing of out of service troubles. The GCG stated that these recommendations ensure that standards that enforce what appears to be important to customers – resolution of problems – remain in effect.

The ITF noted in its May 31, 2002 filing that among other answertime recommendations, the GCG recommended eliminating the business office and repair service answertime standards, because they are out of step with consumer needs in a competitive environment. The ITF argued that the GCG's recommendation was supported by a market research study showing that successful resolution of problems is more important to customer satisfaction than call holding times. The ITF, once again, urged the Commission to rely on such objective evidence, rather than the Public Staff's unsupported concerns and unfounded fears.

PUBLIC STAFF: The Public Staff recommended that the Commission conclude that the appropriate standards for answertimes should be as follows:

Business Office Answertime – 90% or more of calls directed to a live business office representative are answered within 20 seconds; and

Repair Service Answertime – 90% or more of calls directed to a live repair service representative are answered within 20 seconds.

DISCUSSION

The Commission does not agree with the GCG's proposal that we should monitor complaints relating to answertime to determine if this goal is an important factor in customers' perception of service quality. The Commission does not believe that such monitoring of complaints would capture in any actual way customer satisfaction or dissatisfaction with business office or repair office answertimes. The Commission does not believe that every customer that is dissatisfied with answertimes will complain to the company and/or the Commission.

The Commission further notes that the state survey information presented by the GCG reveals that 18% of states have a business office answertime standard that is the same as or more stringent than the current standard in North Carolina. Likewise, the GCG's survey results show that 20% of states have a repair service answertime standard that is the same as or more stringent that the current standard in North Carolina. The Commission believes that these numbers show that North Carolina's standards are fairly stringent and that this result is appropriate. The Commission would rather see North Carolina's service standards within the top 20% of the most stringent in the Country than in the lower 20% of less stringent standards. Service quality is extremely important and to ensure good service, service standards should be appropriately stringent. The Commission believes that the current business office and repair office answertimes in North Carolina are sufficiently and appropriately stringent. Therefore, the Commission concludes that the current average answertime standards of 90% or more of calls answered within 20 seconds should be retained in Rule R9-8.

Notwithstanding this conclusion, the Commission also has concerns about average answertimes for the business office and repair service. The inherent truth about average answertimes is that, although one customer may receive an answer in 15 seconds, another customer may have to wait 15 minutes or more for an answer. The Commission believes that it would be beneficial and in the public interest to establish an absolute answertime for the business office and repair service, in addition to the average answertime standard of 90% within 20 seconds adopted above. The Commission notes that the GCG pointed out that the Michigan Public Service Commission has proposed new service quality standards for that state wherein the repair answertime would be made less stringent in the new standard, with the current average answertime requirement of 25 seconds replaced by a required answer within 3 minutes. The Commission believes that this approach of adopting a required answertime is reasonable, appropriate, and in the public interest.

However, the Commission notes that, with this proposal, a reasonable absolute answertime must be established. The Commission, therefore, believes that it is appropriate to require the ITF and the Public Staff to each develop a proposal for a specific absolute maximum answertime standard for our consideration. The Commission specifies that this absolute maximum answertime standard will be applied **in addition to** the average answertime standard of 90% within 20 seconds.

The Commission will hold an evidentiary hearing to consider the proposals on Wednesday, January 29, 2003. The ITF shall file its proposal and related prefiled testimony by no later than Friday, January 10, 2003 and the Public Staff shall file its proposal and related prefiled testimony by no later than Friday, January 24, 2003. The evidentiary hearing will include evidence on: (1) an absolute maximum answertime standard for business office and repair service; and (2) the appropriate uniform reporting procedures for the four answertime standards as discussed in Section III, Issue No. 4 of this Order.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to retain the current average answertime standards in Rule R9-8 of 90% or more of calls answered within 20 seconds for Business Office Answertime and Repair Service Answertime. However, the Commission further finds it appropriate to adopt an absolute maximum answertime standard which will be established after the ITF and the Public Staff file proposals and related prefiled testimony for such a maximum and a hearing is held to consider the proposals and testimony. The ITF is to file its proposal and related prefiled testimony by no later than Friday, January 10, 2003 and the Public Staff is to file its proposal and related prefiled testimony by no later than Friday, January 24, 2003. The hearing will be held on Wednesday, January 29, 2003.

Measure (12): Initial Customer Trouble Reports (excludes subsequent reports) – current standard is 4.75 or less per 100 access lines

Measure (13): Repeat Reports – current standard is 1.0 report or less per 100 access lines

GCG/ITF: In the November 30, 2001 ITF Final Report, the GCG stated that most jurisdictions have standards applicable to customer trouble reports. However, the GCG noted that a number of jurisdictions restrict their trouble report standard to total trouble reports, rather than distinguishing initial from repeat reports. In addition, the GCG stated that a number of the jurisdictions having separate standards, instead of having an absolute numeric requirement on the number of repeat trouble standards, have a standard in which the number of repeat troubles is no more than a given percentage of the number of initial trouble reports.

The GCG provided the following table which summarizes the information obtained in its survey with respect to Initial Customer Trouble Reports:

Initial Customer Trouble Reports per 100 Access Lines

Jurisdiction/High/Low	Values
North Carolina	4.75 or less per 100 access lines
Less Stringent (Indiana)	10.00
More Stringent (Maine – Verizon Alternative Form of Regulation)	1.08
Common Standard	5.0 or 6.0

The GCG noted that nine jurisdictions appear to have no standard for initial customer trouble reports.

The GCG commented that 10 of the jurisdictions surveyed utilize a standard of five trouble reports per 100 access lines, and 11 use a standard of six reports per 100 lines. Nonetheless, the GCG stated that because of the importance of trouble reports to overall service quality and the fact that the existing North Carolina standard of 4.75 reports is close to these standards, it is not recommending a change in this measure.

Further, in the November 30, 2001 ITF Final Report, the GCG commented that the majority of jurisdictions (41) do not have an identifiable repeat trouble report standard. However, the GCG stated that in most instances, repeat trouble reports are included with initial trouble reports for purposes of measurement and qualification under a standard of performance. The GCG provided the following table on repeat report standards in various states:

Repeat Reports

Jurisdiction/High/Low	Values
North Carolina	1.0 report or less per 100 access lines
Less Stringent (Kansas)	1.2 [20% or less of monthly total Customer Trouble Reports]
More Stringent (Minnesota – Qwest)	0.25 [less than 10% of trouble reports, which are limited to 2.5 per 100 lines]
Common Standard	0.9 to 1.0 reports

The GCG stated that only nine states were identified reflecting the use of a repeat trouble report standard.

PUBLIC STAFF: The Public Staff recommended that the Commission not alter the current Rule R9-8 standards for Initial Customer Trouble Reports or Repeat Reports.

DISCUSSION

The Commission agrees with the ITF and the Public Staff that it is appropriate to not alter the current objectives for Initial Customer Trouble Reports and Repeat Reports. The Commission notes that the state survey information filed by the ITF shows that North Carolina's current objectives for these measures are very close the common standards. The Commission further believes that it is appropriate to distinguish and separately report the Initial Customer Trouble Reports and the Repeat Reports in order to receive information on trouble reports that are not resolved by a carrier the first time.

Therefore, the Commission finds it appropriate to not alter the current Rule R9-8 objectives for Initial Customer Trouble Reports or Repeat Reports thereby leaving the objectives at 4.75 or less per 100 access lines for Initial Customer Trouble Reports and 1.0 report or less per 100 access lines for Repeat Reports.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to not alter the current Rule R9-8 objectives for Initial Customer Trouble Reports or Repeat Reports thereby leaving the objectives at 4.75 or less per 100 access lines for Initial Customer Trouble Reports and 1.0 report or less per 100 access lines for Repeat Reports.

Measure (14): Out-of-Service Troubles Cleared Within 24 Hours – current standard is 95% or more

GCG/ITF: In the November 30, 2001 ITF Final Report, the GCG recommended that the Commission revise the Out-of-Service Troubles Cleared Within 24 Hours standard from 95% cleared within 24 hours to 90% of troubles being cleared within 24 hours. The GCG maintained that this reflects a slight relaxation from the existing standard. The GCG provided the following table to establish that the North Carolina standard is one of the most stringent standards applied to telecommunications carriers:

Out-of-Service Troubles Cleared Within 24 Hours

Number of Commissions	Percentage	Hours
1	90%	8 hours
4	100%	24 hours
▶ **9 (includes NC)**	**95%**	**24 hours**
9	90%	24 hours
9	85%	24 hours
1	80%	24 hours
1	75%	24 hours
1	70%	24 hours

Number of Commissions	Percentage	Hours
1	65%	24 hours
1	59%	24 hours
1	72%	36 hours
2	100%	48 hours
1	95%	48 hours
1	90%	48 hours
Total: 42		

The GCG stated that with the proposed revision of 90% in 24 hours, North Carolina would continue to have a standard that demands excellent performance, while providing some relaxation that is appropriate for a transitionally competitive environment. In addition, the GCG noted that its recommended 90%-in-24 hour standard is in the mainstream of standards imposed by other commissions.

The ITF noted in its May 31, 2002 filing that the Public Staff recommended that the Commission reject the GCG's recommendation to relax the existing measure for Out-of-Service Troubles Cleared Within 24 Hours to 90%, from the existing 95% standard. The ITF stated that the GCG's analysis found that North Carolina had one of the most stringent trouble clearing standards among the states. The ITF argued that slightly revising the standard to 90% would still demand excellent performance, "while providing some relaxation that is appropriate for a transitionally competitive environment."

The ITF noted that the Public Staff commented that the ITF "has not explained why companies would be unable to offer repair service that meets the 95% standard, and the majority of ILECs in this state do regularly manage to meet it." The ITF argued that the Public Staff missed the point, which is not that the companies cannot meet the standard. The ITF stated that it agrees that service quality in North Carolina today is generally very good, even though the existing 95% standard is especially difficult to meet in geographically dispersed rural territories. The ITF stated that as the Public Staff observed, North Carolina customers have become accustomed to adequate service and may actually take it for granted. The ITF maintained that if that is true, then any carrier providing inferior service will be penalized in the market, by failing to attract and retain customers. The ITF asserted that there is no need for unreasonably strict regulations that limit carriers' flexibility to respond to varying customer demands (for example, certain customers will place more emphasis on price than service quality) and that fail to realize the geographically diverse serving territories.

PUBLIC STAFF: The Public Staff recommended that the Commission retain the current Rule R9-8 standard of 95% or more of out-of-service troubles cleared within 24 hours.

In its April 5, 2002 Report, the Public Staff recommended that the Commission reject the ITF's proposal to reduce the benchmark for Out-of-Service Troubles Cleared Within 24 Hours from 95% to 90%. The Public Staff noted that the ITF has not explained why companies would be unable to offer repair services that meets the 95% standard, and the majority of the ILECs in the State do regularly manage to meet it. The Public Staff argued that the ability to promptly restore service to customers is one of the most significant indicators of a company's service performance. The Public Staff asserted that this standard should not be relaxed.

DISCUSSION

The Commission notes that the state survey presented in the GCG's Report reveals that 13 states (or 26% of all states) have an Out-of-Service Troubles Cleared Within 24 Hours objective which is the same as or more stringent than the 95% objective currently reflected in Rule R9-8. The Commission firmly believes that Out-of-Service Troubles Cleared Within 24 Hours is a critical measure in the provision of telecommunications services. The Commission further notes that the Public Staff has recommended that the Commission not alter the current objective for this measure.

The Commission also does not believe that the ITF/GCG provided adequate or convincing evidence to warrant a change to the current objective.

Therefore, the Commission finds it appropriate to not alter the current objective for Out-of-Service Troubles Cleared Within 24 Hours thereby leaving the objective at 95%.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to not alter the current objective for Out-of-Service Troubles Cleared Within 24 Hours thereby leaving the objective at 95%.

Measure (15): Regular Service Orders Completed Within 5 Working Days – current standard is 90% or more

GCG/ITF: In the November 30, 2001 ITF Final Report, the GCG commented that most, but not all, jurisdictions have some standard with respect to the rate at which regular service orders are installed.

The GCG noted that 13 jurisdictions have no discernible requirement with respect to the time period in which regular service orders are to be completed. The GCG provided the following information on the regular service order standards in other states:

Regular Service Orders Completed Within 5 Working Days

Jurisdiction/High/Low	Values
North Carolina	90% or more
Less Stringent (Delaware, D.C.)	98% within 20 days
More Stringent (Utah)	95% within 3 days
Common Standard	85% to 100% within 5 days

The GCG noted that the most common standard identified for completion of regular service orders is 90% in 5 days. The GCG argued that there are a significant number of jurisdictions that utilize 85% in 5 days and 95% in 5 days. Therefore, the GCG stated, it appears that the North Carolina standard, 90% in 5 days, is reasonable and should continue to apply, subject to the provision that service providers can apply to adjust their reports for force majeure events.

PUBLIC STAFF: The Public Staff recommended that the Commission not alter the current Rule R9-8 standard of 90% or more of regular service orders completed within 5 working days.

DISCUSSION

The Commission notes that the ITF has stated that the current objective for Regular Service Orders Completed Within 5 Working Days is reasonable and has not recommended that it be altered. The Commission notes that the Public Staff has made the same recommendation. The Commission further notes that the state survey information presented in the ITF's Final Report shows that North Carolina's current Rule R9-8 objective is well within the common standard in the Country. Therefore, the Commission finds it appropriate to not alter the current Rule R9-8 objective of 90% or more of Regular Service Orders Completed Within 5 Working Days.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to not alter the current Rule R9-8 objective of 90% or more of Regular Service Orders Completed Within 5 Working Days.

Measure (16): New Service Installation Appointments Not Met for Company Reasons – current R9-8 objective is 5% or less

GCG/ITF: In the November 30, 2001 ITF Final Report, the GCG provided the following table which summarizes the survey information from the states for which standards were obtained:

New Service Installation Appointments Not Met for Company Reasons

Jurisdiction/High/Low	Values
North Carolina	5% or less
Less Stringent (Minnesota – Qwest)	20%
More Stringent (Louisiana)	1.7%
Common Standard	10%

The GCG noted that 22 jurisdictions have no discernible standard concerning the percentage of new service installation appointments that must be met.

The GCG recommended the continued application of the existing North Carolina standard of 5% because of the high value placed by customers on having a reliable appointment for receiving service. In addition, the GCG noted that the recommended standard of 5% is more stringent than the most common standard of 10%, which was utilized by 17 of the jurisdictions for which the standard was identified.

PUBLIC STAFF: The Public Staff recommended that the Commission not alter the current Rule R9-8 objective of 5% or less for New Service Installation Appointments Not Met for Company Reasons.

DISCUSSION

The Commission notes that the ITF has stated that the current objective for New Service Installation Appointments Not Met for Company Reasons is reasonable and has not recommended that it be altered. The Commission notes that the Public Staff has made the same recommendation. The Commission further notes that the state survey information presented in the ITF's Final Report shows that North Carolina's current Rule R9-8 objective is not unreasonably higher than the common standard in the Country. Therefore, the Commission finds it appropriate to not alter the current Rule R9-8 objective of 5% or less of New Service Installation Appointments Not Met for Company Reasons.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to not alter the current Rule R9-8 objective of 5% or less of New Service Installation Appointments Not Met for Company Reasons.

Measure (17): New Service Held Orders Not Completed Within 30 Days – current Rule R9-8 standard is 0.1% or less of total access lines

GCG/ITF: In the November 30, 2001 ITF Final Report, the GCG provided the following table which summarizes the survey of those states for which a held order service standard was identified:

New Service Held Orders Not Completed Within 30 Days

Jurisdiction/High/Low	Values
North Carolina	0.1% or less of total access lines
Less Stringent (Montana)	5.0% within 30 days
More Stringent (Mississippi)	5.0% within 10 days
Colorado	50 held orders, or more than 5% of total service applications in wire center in consecutive 3-month period
Oregon	Measured from commitment date of not more than 6 business days from request for service, the lesser of 5 held orders per 1,000 inward orders OR no more than 2 per wire center per month. Held orders over 30 days not to exceed 10% of total monthly held orders.
Utah	Measured from initial commitment date, no more than 4 held orders per 1,000 new transfer and change orders at the end of any month on a statewide basis
Wyoming	Reporting required when held orders exceed smaller of 2% of lines or 10 orders.

The GCG noted that 37 jurisdictions do not appear to have a held order standard. The GCG identified very little data with respect to this standard and, for the data that exists, the GCG stated that there is no clear common standard. The GCG recommended continuation of the existing standard, subject to the provision that carriers can apply to adjust their data, as appropriate, for force majeure events.

PUBLIC STAFF: The Public Staff recommended that the Commission not alter the current Rule R9-8 objective of 0.1% or less of total access lines for New Service Held Orders Not Completed Within 30 Days.

DISCUSSION

The Commission notes that the ITF has stated that the current objective for New Service Held Orders Not Completed Within 30 Days is reasonable and has not recommended that it be altered. The Commission notes that the Public Staff has made the same recommendation. The Commission further notes that the state survey information presented in the ITF's Final Report shows that there is no clear common standard for this measure and that North Carolina's current Rule R9-8 objective is not unreasonably different than the standards in place in other states. Therefore, the Commission finds it appropriate to not alter the current Rule R9-8 objective of no more than 0.1% or less of total access lines for New Service Held Orders Not Completed Within 30 Days.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to not alter the current Rule R9-8 objective of no more than 0.1% or less of total access lines for New Service Held Orders Not Completed Within 30 Days.

► **ISSUE NO. 2: Should any additional measures be added to Commission Rule R9-8?**

GCG/ITF: The GCG/ITF recommended that no additional measures be added to Commission Rule R9-8.

PUBLIC STAFF: The Public Staff stated in its April 5, 2002 filing that it was scrutinizing the rules and regulations of other jurisdictions and reviewing recent rulemaking activities in several of them. The Public Staff noted that it is considering the possibility of adding new objectives, including ones aimed at improving service reliability and reducing the likelihood of preventable service outages.

However, the Public Staff stated in its July 3, 2002 filing that it is not recommending the addition of new objectives to Rule R9-8 at this time. Instead, the Public Staff maintained, it is proposing modest updates and modifications to the Rule to take into account technological changes that have occurred since the Rule was codified in 1988, and to correct certain problems and inconsistencies the Public Staff has observed in the application of the Rule.

DISCUSSION

The Commission notes that no party is proposing to add any new measurements to Rule R9-8. Therefore, the Commission does not find it appropriate to include any new measurements at this time. However, the Commission intends to review Rule R9-8 with greater frequency than in the past in order to analyze the Rule in the context of the current telecommunications market.

COMMISSION CONCLUSIONS: The Commission does not find it appropriate to include any new measurements to Rule R9-8 at this time but concludes that we intend to review Rule R9-8 with greater frequency than in the past.

► **ISSUE NO. 3: Is it appropriate to include a Force Majeure Clause in Commission Rule R9-8?**

GCG/ITF: In the November 30, 2001 ITF Final Report, the GCG argued that the Commission should establish an appropriate mechanism for reporting the effect of events outside the control of the carriers. Specifically, the GCG maintained that companies should be permitted to report unadjusted and adjusted data to the Commission, by eliminating the effects of storms, floods, and other unusual circumstances. The GCG commented that companies making such adjustments also should file reports on their response to the incident. For example, the GCG stated, Utah's service quality standard requires telephone companies to meet the standard, "excluding documented Allowed Service Disruption events listed under R746-340-1(B)(1)." The GCG stated that those events are defined as follows:

R746-340-1(B) Definitions – In the interpretation of these rules, the following definitions shall apply:

(1) "Allowed Service Disruption Event" – an event when a telecommunications corporation is prevented from providing adequate service due to:

a. A customer's act;
b. A customer's failure to act;

c. A governmental agency's delay in granting a right-of-way or other required permit;

d. A disaster or any act of nature that would not have been reasonably anticipated and prepared for by the telecommunications corporation;

e. A disaster of sufficient intensity to give rise to an emergency being declared by state government;

f. A work stoppage, which shall include a grace period of six weeks following return to work;

g. A cable cut outside the telecommunications corporation's control affecting more than 20 pairs; and/or

h. A public calling event, busy calling or dial tone loss due to mass calling or dial-up event.

The GCG argued that North Carolina is subject to hurricanes, and the lightning strikes, high winds, and flooding associated with such storms. The GCG noted that a report issued by U.S. PIRG, the national office for the State Public Interest Research Groups, states:

- The five states with the highest amount of weather damage (insured loss and government assistance) in 1999 were, in descending order: **North Carolina**, Texas, Oklahoma, North Dakota, and Virginia.
- The five states with the highest amount of weather damage (insured loss and government assistance) in the 1990's were, in descending order: Florida, Texas, California, **North Carolina**, and Minnesota. [Emphasis added.]

The GCG stated that extreme weather and other events do not relieve the utilities of their obligation for providing service of an appropriate quality. However, the GCG argued that it should be recognized that it is not possible, during adverse times, to provide the service that can be provided during normal weather. The GCG commented that during adverse times, calling volumes, and initial and repeat trouble reports increase at precisely the time when the utilities' systems are most stressed.

The GCG stated that it should be expected that the appropriate level of staffing and other resources will be, at such times, incapable of providing a return to service within the time frame normally and appropriately required – while it is appropriate to staff for "normal" peak requirements, it is equally inappropriate to maintain normal staffing at levels necessary to meet abnormal peak requirements. Accordingly, the GCG argued that utilities should provide unadjusted and adjusted service quality information to the Commission, bearing in mind that they have the burden of establishing not only that the event(s) for which they are adjusting are of sufficient magnitude and duration to warrant making an adjustment, but also for establishing that their response, before, during, and after the event, was appropriate. With this recommendation, the GCG believes that the Commission will obtain necessary information not only to ensure that service quality is of a level that is expected, but that the response to abnormal events is appropriate.

PUBLIC STAFF: In its April 5, 2002 filing, the Public Staff noted that it concurs with the ITF's view that companies should be able to file adjusted and unadjusted service quality figures in cases where they can demonstrate that a force majeure event has occurred and that adjustments are reasonable and appropriate. The Public Staff stated that there is clearly a need for the Commission to take into account exceptional weather events, such as the severe hurricanes that struck eastern North Carolina during the late 1990s. The Public Staff maintained that poor service due to thunderstorms that occur frequently during the spring and summer months and brief periods of snow and ice during most North Carolina winters should not be excused absent a clear showing that such weather was so extreme and unpredictable that it was impossible for the company to carry out its normal service functions.

The Public Staff stated that it believes that any company seeking a waiver of part or all of Rule R9-8 should be required to file its waiver request along with the appropriate data. The Public Staff recommended that in order to secure Commission approval, the waiver request should clearly demonstrate that (1) the force majeure event was sufficiently serious and unusual to warrant adjustment of the reported monthly statistics, including a detailed description of the adverse consequences of the event on the ratepayers' service and the company's facilities; (2) the company prudently planned and prepared in advance for such emergencies; (3) despite these plans and preparations, and the best efforts of the company personnel before, during, and after the event, failures to satisfy the service objectives were unavoidable; and (4) the extent and nature of the adjustments requested are appropriate for the circumstances. The Public Staff recommended that absent a finding by the Commission that all four parts of this test have been met, the Commission should hold the company responsible for satisfying the standards of Rule R9-8 and for payment of any established penalties for failure to meet them.

ITF: In its May 31, 2002 filing, the ITF noted that the Public Staff agreed with the GCG's recommendation that companies should be permitted to file adjusted and unadjusted service quality figures in cases where events beyond carriers' control affect their service results. The ITF stated that the Public Staff proposed that waiver requests satisfy four specific factors: (1) the force majeure event was sufficiently serious and unusual to warrant adjustment of the reported monthly statistics, including a detailed description of the advanced consequences of the event on the ratepayers' service and the company's facilities; (2) the company prudently planned and prepared in advance for such emergencies; (3) despite these plans and preparations, and the best efforts of company personnel before, during, and after the event, failures to satisfy the service objectives were unavoidable; and (4) the extent and nature of the adjustments requested are appropriate for the circumstances.

The ITF stated that as a general matter, it agrees that a company's waiver request should demonstrate the seriousness of the force majeure event and justify the need for a waiver. The ITF noted that in this regard, a company would typically provide the information covered in criteria 1, 3, and 4 of the Public Staff's list. However, the ITF argued that the second criterion is unreasonable because it is inconsistent with the nature of a force majeure event – which, by definition, is "serious and unusual" enough (to use the Public Staff's words in Criterion No. 1) that the company could not plan or prepare adequately in advance for the emergency. The ITF maintained that if a company had to meet the Public Staff's second criterion, it could never justify a waiver.

The ITF argued that a better approach than specification of four criteria the Public Staff suggested would be a more general requirement for the company to describe the force majeure event and the company's efforts to respond to it and to explain why a waiver of particular provisions of Rule R9-8 is warranted under the circumstances. The ITF argued that this approach would give the Company and the Commission the necessary flexibility to address waivers for the widely varying range of force majeure events that may occur.

The ITF argued that in no event should the Commission accept the Public Staff's second criterion, as it would render the waiver opportunity meaningless.

DISCUSSION

The Commission notes that both the ITF and the Public Staff agree that a force majeure clause should be included in Rule R9-8. However, the Public Staff has proposed four criteria for a force majeure clause, and the ITF disagrees with the Public Staff's proposed Criterion No. 2 (the company prudently planned and prepared in advance for such emergencies).

The Commission believes that the Public Staff's four criteria are appropriate. The Commission does not agree with the ITF that companies cannot plan or prepare adequately in advance for all force majeure events. The Commission notes that hurricanes are predicted days in advance and in the event of hurricanes, companies generally have an opportunity to plan and prepare to a certain extent for the event. Therefore, the Commission believes that it is appropriate to include the Public Staff's Criterion No. 2, but modifying the criterion to insert the phrase "to the extent possible".

The Commission finds it appropriate to accept the ITF's proposal to include a force majeure clause in Rule R9-8. The Commission concludes that the following section should be included in Rule R9-8:

> Force Majeure: A company may seek a waiver of part or all of Rule R9-8 due to force majeure. To request a waiver, a company should file adjusted data and unadjusted data along with its waiver request with the Commission which includes appropriate data to support its request. In order to secure Commission approval, the waiver request should clearly demonstrate that (1) the force majeure event was sufficiently serious and unusual to warrant adjustment of the reported monthly statistics, including a detailed description of the adverse consequences of the event on the ratepayers' service and the company's facilities; (2) to the extent possible, the company prudently planned and prepared in advance for such emergencies; (3) despite these plans and preparations, and the best efforts of the company personnel before, during, and after the event, failures to satisfy the service objectives were unavoidable; **and** (4) the extent and nature of the adjustments requested are appropriate for the circumstances. The Commission may grant waiver requests if the Commission finds that all four criteria have been met.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to adopt a force majeure clause, as outlined above, for inclusion in Rule R9-8.

▶ **ISSUE NO. 4: What are the appropriate uniform reporting procedures?**

PUBLIC STAFF (General): Addressing uniform measurement procedures in its April 5, 2002 filing, the Public Staff stated that one of its most urgent concerns in this docket is the need for a consistent set of measurement procedures for the service quality objectives. The Public Staff noted that the ITF stated in its Report that it urges the Commission to rely on the Uniform Measurement Procedures filed by the ITF on June 21, 2001 for its application of rules to residence and business customers. The Public Staff noted that BellSouth, acting on behalf of the ITF, provided the Uniform Measurement Procedures on June 21, 2001 and while the Uniform Measurement Procedures are an improvement over the previous filings that ILECs and CLPs submitted between November 2000 and January 2001, there are still many essential details that have been omitted from the explanations. The Public Staff noted that many questions must be answered in order to measure operator answertime in a meaningful and accurate way under real-life circumstances. The Public Staff noted that the information that had been shared with the Commission and the Public Staff thus far was inadequate to enable the Public Staff to formulate recommendations on a uniform answertime measurement policy.

The Public Staff stated that between November 2000 and January 2001, several local carriers and carrier coalitions filed descriptions of the procedures they use to measure their monthly service performance under Rule R9-8. The Public Staff maintained that these procedural descriptions were for the most part inadequate to enable interested parties to completely understand all the details necessary to collect data and convert them into reportable statistics. The Public Staff stated that a follow-up filing by the ITF in June 2001 provided additional details, but still lacked complete information. After the ITF's Final Report was filed, the Public Staff stated that it made further attempts through data requests to obtain needed details and documented service quality measurement procedures and practices used by the ILECs, but that its efforts have also yielded insufficient information. As a result, the Public Staff stated that it was arranging meetings with company personnel to gain a better understanding of their objective measurement procedures. The Public Staff noted that this will be a labor-intensive process that will take several months, and the Public Staff requested additional time to complete the effort.

The Public Staff stated that the parties to this docket have expressed numerous concerns about the current objectives. The most obvious concern to the Public Staff involves the four answertime objectives, which were adopted in an era when customers dialed local and DA operators and business office and repair service representatives and were routed directly to live attendants without encountering menus. The Public Staff noted that at that time, measurement of answertimes was simple: the tester simply dialed the appropriate number, started timing the call, and then stopped the timing sequence as soon as a live person answered. The Public Staff argued that this same practice may still be appropriate in an environment containing menus, but the issue is highly controversial. The Public Staff stated that it believes the Commission should ensure that companies using menus structure them as efficiently as possible, avoid using the menus for extraneous purposes such as marketing messages, and enable customers who wish to speak to a live person to quickly and easily exit the menus and have their calls handled efficiently by operators or service representatives. However, the Public Staff stated that it is still researching the different menus and queue systems used by the ILECs and the CLPs so that it can reach conclusions about how these work and how they should work. The Public Staff stated that it is also trying to determine what answertime measurements and objective benchmarks are appropriate in a menu environment.

In its July 3, 2002 filing, the Public Staff stated that it had met with representatives from Sprint, ALLTEL Carolina, BellSouth, North State, and Verizon to gain a better understanding of these companies' procedures and processes for providing and measuring service quality. The Public Staff commented that it is apparent from the meetings that companies interpret and apply Commission Rule R9-8 differently. The Public Staff stated that in an attempt to standardize the interpretation and application of the Rule, the Public Staff is proposing that Rule R9-8 be revised as set out in Attachment A of its July 3, 2002 filing. The Public Staff maintained that these revisions are necessary to ensure that local telephone service providers offer North Carolina consumers local telephone service that meets certain reasonable, minimal standards.

The Public Staff argued that most service quality reports should reflect as closely as possible the actual answertimes experienced by telephone customers during the report month. The Public Staff stated that ideally, in order to capture the true waiting times experienced by customers, operator "0", directory assistance, business office, and repair service answertime measurements should begin at the instant the end user finishes dialing the final digit of the appropriate number(s) that are used to access the respective service, and end at the instant a live operator or service representative prepared to handle the end user's service request answers the call. The Public Staff noted that the Commission and the Public Staff have historically applied these measurement techniques during formal service quality evaluations. However, the Public Staff stated that it recognizes that companies may have practical problems automatically determining both the actual time when an end user finishes dialing an operator, DA, business office, or repair service call and the actual time when a live operator or service representative answers the call in one unified measurement procedure.

The Public Staff proposed that the Commission find that the Companies are expected to engineer the switching and interoffice facilities they use to provide operator "0", directory assistance, business office services, and repair services to customers in order to minimize the possibility of lost or misdirected calls and to keep customer delays to a minimum, consistent with Commission requirements and industry standards. The Public Staff further proposed that all facilities, including network, ports, trunks, and queue sizes, used for provision of these services be engineered to provide a maximum blocking probability of P.01 or better.

The Public Staff opined that directory assistance, business office, and repair service customers whose calls are directed to a menu-driven, automated, interactive answering system should be transferred to a live attendant automatically if the customer fails to interact with the system for a time period of ten seconds following any prompt. The Public Staff recommended that the Commission define that interaction occurs when a customer responds to a customer prompt offered by the system by pressing a number or character key of a Dual-Tone Multi-Frequency (DTMF) keypad associated with a telephone.

The Public Staff proposed that for purposes of determining answertime service level, the Commission find that a call is not considered answered until the appropriate live operator or live service representative is on the line and available to immediately render assistance or accept information necessary to process the call. The Public Staff recommended that if, after speaking to a live attendant, a caller is transferred to another attendant, the answertime should end when the live attendant who actually provides the needed assistance answers the call. The Public Staff proposed that an acknowledgement that the customer is waiting on the line should not constitute an "answer".

The Public Staff proposed that in the initial menu of automated systems, the caller should be instructed that he may dial "0" at any time during the process and be transferred to a live attendant.

The Public Staff recommended that the Commission find that any company that obtains its operator "0" service, directory assistance, or business office or repair service from a regulated local service provider should report the name of the company that actually provides the service, if the statistic for the serving local telephone company is identical to that reported by the underlying carrier. Otherwise, the Public Staff proposed, the company must report its company-specific results. The Public Staff proposed that the serving local telephone company be responsible for selecting a service provider that furnishes service that conforms to Commission requirements.

GCG/ITF (General): The ITF noted in its August 21, 2002 reply brief that the Public Staff recommended that, for the purpose of determining answertime, a call should not be considered answered until a live service representative is on the line. The ITF stated that the Public Staff recommended, in addition, that for business office and repair answertime, companies would only be permitted to count calls answered by live representatives. The ITF asserted that these changes, if adopted, would have the effect of removing from answertime results calls that are serviced by interactive voice response units (IVRUs) or other automated systems.

The ITF argued that the Public Staff's recommendations ignore the fact that customers sometimes prefer the "self-help" offered by automated systems (for example, when checking a bill balance) as an *option* (customers are never forced to use an IVRU). The ITF maintained that certain calls can be handled more efficiently through such systems. The ITF commented that instead of rewarding utilities for seeking more effective and innovative options for meeting customers' needs, the Public Staff's recommendations would penalize such conduct and discourage further investment in automated systems. The ITF noted that the relevant inquiry should not be whether every customer gets to speak to a service representative on every call, but whether customers' needs are met. The ITF asserted that companies have every incentive to satisfy their customers' needs without any external prompting, especially when it is based on mistaken assumptions about what all customers want, as the Public Staff's recommendations here are. The ITF asserted that there is no reason to exclude from the calculation of service reports customer inquiries satisfied by an automated system.

The ITF maintained that the Public Staff further proposed (without any rationale) that if after speaking to a live attendant, a caller is transferred to another attendant, the answertime should end when the live attendant who actually provides the needed assistance answers the call.

The ITF stated that aside from addressing a nonexistent problem, this rule proposal is technically infeasible. The ITF stated that it is unaware of any technology that would capture answertime as the Public Staff has proposed. The ITF noted that once a call has been answered by a service representative, the system records it as an answered call. The ITF maintained that existing systems are not able to "restart" the answertime clock in the event that a call is transferred, let alone evaluate, in retrospect whether a particular representative "actually provide[d] the needed assistance." In addition, the ITF noted that the Public Staff's recommendation neglects the fact that, although companies have implemented systems that will quickly and efficiently route misdirected calls, there will always be some customers who make the wrong routing selection. The ITF maintained that aside from the technical problems, the Public Staff's recommendation would unfairly penalize the company for such customer errors.

The ITF noted that the Public Staff proposed that all operator calls must be routed directly to live operators without the intervention of an automated system. Again, the ITF stated that the Public Staff would unwittingly eliminate a customer convenience because it mistakenly believes it knows what all customers want. The ITF stated that many customers dial "0" inappropriately when they actually want directory assistance, repair, or the business office. The ITF commented that some companies use automated systems to quickly and efficiently reroute these misdirected calls. The ITF argued that the Public Staff's proposal would require companies to do away with these systems, thus causing customers to receive a lower level of service, because operators would be tied up with misdirected calls.

The ITF asserted that the Public Staff proposed (with no supporting rationale) that monthly directory assistance (DA) results should be broken down into the following categories: calls routed directly to live DA operators without automated intervention; calls initially routed to an automated system; and all DA calls. The ITF argued that this recommendation for yet another level of reporting detail is arbitrary and thus unwarranted. The ITF maintained that it also neglects the technical realities of companies' systems. The ITF stated that for companies that utilize automated systems that collect the location and listing information from a customer, every call will initially be routed to an automated system. Additionally, the ITF argued that many of these systems do not require customers to press a key to be routed to a live operator; routing is performed automatically once the system has collected the required information from the customer. The ITF asserted that measurement of DA answertime should not begin until the customer has provided the necessary information to the system-not when he presses a button to be routed to a DA operator, as the Public Staff rule revision would require.

The ITF maintained that these and the numerous other rule revisions the Public Staff proposed are not "modest updates and modifications to Rule R9-8," as the Public Staff claims. The ITF asserted that they are, rather, substantive, material revisions that will require companies to make expensive operational changes. The ITF argued that instead of "tak[ing] into account technological changes that have occurred since the Rule was codified", the Public Staff's recommendations are regressive, neglecting market changes that have occurred since Rule R9-8 was adopted and discouraging investment in new technologies to more efficiently meet customers' needs. The ITF stated that based on its filings in this docket, the Commission should have no doubt that these conclusions are correct. However, the ITF stated that should the Commission wish to gather evidence about the negative effects of the Public Staff's proposed rule revisions, then it should hold a hearing.

PUBLIC STAFF: The Public Staff noted in its October 10, 2002 reply comments that the ITF contended that the Public Staff's recommendation that calls not be considered answered until a live service representative comes on the line would remove from the answertime results calls that are serviced by IVRUs or other automated systems. The Public Staff noted that according to the ITF, this recommendation ignores the fact that customers sometimes prefer IVRUs as an option, and it penalizes companies for efficiency and innovation and discourages further investment in automated systems.

The Public Staff stated that it believes that the answertime measurement principles applied during the rate case era should still be generally applicable today. The Public Staff noted that the purpose of each answertime measurement has historically been to capture the actual time delay between the moment a customer finishes dialing a number to access an operator or service representative and the time a live operator or representative comes on the line to assist the customer. The Public Staff maintained that of all the answertime interactions that can be measured, this is the key measurement – the one that reflects the total length of time a customer has to wait to reach a live attendant for help. The Public Staff asserted that it is important that this objective specifically address the time it takes a customer to reach a live operator or service representative, for this "full service" interaction is the only one that can address the full range of inquiries and concerns that may be raised by the customer.

The Public Staff maintained that contrary to the ITF's argument, telephone companies do automatically receive "credit" on their answertime performance when they implement effective IVRUs. The Public Staff noted that if interactive systems efficiently perform certain basic customer service functions – for example, providing a customer bill balance automatically after a customer inputs an account number – they can divert such routine calls away from live call centers. The Public Staff noted that this allows the call centers to respond more efficiently to the remaining calls that either cannot be handled automatically or that customers simply elect to send to live representatives. The Public Staff noted that by making IVRUs easier to use, more appealing to customers, and more versatile with respect to the kinds of inquires they can handle, companies can gradually divert more and more calls away from live service representatives, thereby potentially reducing labor costs. The Public Staff asserted that this provides sufficient inventive for companies to continually strive to improve and upgrade their IVRUs.

The Public Staff noted that some companies currently factor IVRU answertimes into their monthly reported answertime results. The Public Staff stated that such answertimes typically fall in a range between zero and a few seconds, and their inclusion in answertime calculations can significantly improve a company's performance statistics. The Public Staff maintained that, however, these artificially short answertimes merely reflect the fact that an IVRU, like any other answering machine, can terminate an incoming call almost instantaneously. The Public Staff asserted that such an answer is not equivalent to an answer by a live operator or service representative. The Public Staff noted that if an IVRU answers a customer's call, the customer must still wait patiently on the line to determine whether it offers the required service and, if so, to initiate a request for that service. The Public Staff maintained that with a live service representative, this essential interaction can begin the instant the representative answers the call. The Public Staff opined that the answer by a live service representative is the most meaningful endpoint for an answertime measurement, and it is so different from the answer provided by an IVRU that combining the two types of results makes no sense whatsoever.

The Public Staff concluded by stating that it would not object to the separate reporting of live and automated (IVRU) answertimes. However, the Public Staff stated that it recommends that the Commission apply the Rule R9-8 objectives strictly to the live answer results.

The Public Staff noted that it proposed that the answertime should end when the live attendant who actually provides the needed assistance answers the call. The Public Staff noted that according to the ITF, this proposal is technically infeasible because the answertime clock stops when the first representative answers the call, and it cannot be restarted if the call is transferred to another representative.

The Public Staff stated that it shares the ITF's concern that a portion of the language in the proposed revisions to Rule R9-8 may unfairly penalize companies for their customers' routing errors. The Public Staff noted that, accordingly, it recommends that the following sentence be stricken from the last paragraph on page 3, Attachment A of the July 3, 2002 Further Recommendations of the Public Staff:

> If, after speaking to a live attendant, a caller is transferred to another attendant, the answertime should end when the live attendant who actually provides the needed assistance answers the call.

However, the Public Staff stated that it believes that companies should make diligent efforts to ensure that customers who make appropriate choices in response to an IVRU menu are efficiently routed from the queue to service representatives who are qualified to address their service needs. The Public Staff noted that in the event a transfer to another representative becomes necessary, the transfer should be made by requiring customers to wait at the end of another queue.

DISCUSSION

The Commission will discuss uniform reporting procedures for each Rule R9-8 measure separately below. The Commission notes that no party presented any evidence on a uniform reporting procedure for Measures 1 - 7 concerning completion rates, transmission loss, and noise levels.

4(a) - OPERATOR "O" ANSWERTIME

GCG/ITF: In its June 21, 2001 filing, the ITF provided the following proposed Uniform Measurement procedures:

R9-8(a) objective: 90% or more within 10 seconds or an Equivalent Average Answertime in seconds.

At a minimum, the measurement interval will include calls placed between 6:00 a.m. and 12:00 midnight. Timing starts when entering the operator queue at the switching system serving the operator positions. For companies using manual procedures, timing starts at the time the calling party received ring back tone. Timing stops when the call is answered on either an automated or manual basis.

Calculation when measuring % answered within 10 seconds:

$$\textbf{CALCULATION:} \quad \frac{\text{Calls offered * - Calls delayed more than 10 seconds**}}{\text{Calls offered*}}$$

Calculation when determining an average answertime:

$$\textbf{CALCULATION:} \quad \frac{\text{Total seconds in queue***}}{\text{Calls offered*}}$$

*includes calls abandoned by customer
**includes calls abandoned by customer after 10 seconds
(BellSouth does not apply this factor in its service level equation)
***as measured at the switching center serving the operator positions

PUBLIC STAFF: In its July 3, 2002 filing, the Public Staff provided the following proposed uniform measurement procedures:

Measured quantity: The percentage of operator "0" calls each month that reach a live operator within ten seconds from the time the end user dials "0."

Company measurement procedure: Companies should begin timing operator answertime for each incoming call at the instant the call arrives at the switch serving the operator service positions, and should continue timing until a physical talk path is established between the end user and a live operator prepared to offer immediate assistance. All operator calls must be routed directly to live operators without the intervention of an automated system. The answertime for the call is the difference between these two time measurements. The monthly performance figure reported to the Commission shall be calculated as follows:

$$\text{Operator “0” answertime} = 100 \times \frac{\text{Total operator “0” calls with answertimes of 10.0 seconds or less}}{\text{Total calls made to “0” operator}}$$

Companies shall exclude from the numerator and denominator of this calculation data for all calls in which the end user dials "0" but terminates the call within ten seconds without reaching a live operator. The "Total calls made to '0' operator" figure in the denominator shall include all other properly dialed "0" calls which are prevented from reaching live operators.

Monthly reporting requirement: Percentage of calls from North Carolina end users answered by a live operator within ten seconds, reported to the nearest tenth of a percent.

Concerning routing all operator "O" calls directly to live operators without the intervention of an automated system, the Public Staff stated in its October 10, 2002 reply comments that it believes that the ITF's comments warrant further study, and recommended that the Commission require each ILEC or CLP that uses an automated system to reroute misdirected "O" calls to directory assistance, the business office, or repair center to (1) file a copy of the entire automated operator service script, and explain in detail how the system operates; (2) estimate or measure the respective percentages of misdirected "O" calls that are automatically rerouted to directory assistance, the business office, and repair service, and furnish these percentages to the Commission; and (3) identify any other automated scripts or menus that its customers may encounter when they dial "O" and explain how these operate and why they are necessary.

DISCUSSION

The Commission agrees with the Public Staff that one of the most urgent concerns in this docket is the need to establish a consistent set of measurement procedures for the Rule R9-8 service objectives. The Commission further notes that the Public Staff has stated that its most obvious concern involves the four answertime objectives which were adopted in an era when customers dialed local and DA operators and business office and repair service representatives and were routed directly to live attendants without encountering menus. The Commission notes that there has been a considerable amount of change in the processes used by telephone companies to answer calls from customers since Rule R9-8 was established in 1988. Menu-driven systems and interactive voice response units are now commonplace. The Commission believes that these changes require further investigation before uniform reporting procedures can be established for answertimes.

Based on the information filed by the ITF and the Public Staff and the current use of menu-driven systems and interactive voice response units, the Commission believes that it is necessary to have a short evidentiary hearing to address the appropriate uniform reporting procedures for answertimes. The Commission notes that the Public Staff has even commented in its October 10, 2002 filing that certain issues concerning answertimes warrant further consideration, and the Commission believes that an evidentiary hearing at this point in time would be appropriate to allow for this further consideration.

The Commission finds it appropriate to conduct an evidentiary hearing on Wednesday, January 29, 2003 in which the ITF and the Public Staff will be allowed to present their positions on the appropriate uniform reporting procedures to be used for Operator "O" answertime, DA answertime, business office answertime, and repair service answertime. The ITF shall file its testimony on this issue no later than Friday, January 10, 2003, and the Public Staff shall file its testimony on this issue no later than Friday, January 24, 2003.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to conduct an evidentiary hearing on Wednesday, January 29, 2003 in which the ITF and the Public Staff will be allowed to present their positions on the appropriate uniform reporting procedures to be used for Operator "O" answertime. The ITF shall file its testimony on this issue no later than Friday, January 10, 2003, and the Public Staff shall file its testimony on this issue no later than Friday, January 24, 2003.

4(b) - DIRECTORY ASSISTANCE ANSWERTIME

GCG/ITF: In its June 21, 2001 filing, the ITF provided the following proposed Uniform Measurement procedures:

R9-8(a) objective: 85% or more within 10 seconds or an Equivalent Average Answertime in seconds.

> At a minimum, the measurement interval will include calls placed between 6:00 a.m. and 12:00 midnight. Timing starts when entering the operator queue at the switching system serving the operator positions. For companies using manual procedures, timing starts at the time the calling party receives ring back tone. Timing stops when the call is answered on either an automated or manual basis.
>
> Calculation when measuring the % answered within 10 seconds:
>
> **CALCULATION:** $\dfrac{\text{Calls offered* - Calls delayed more than 10 seconds**}}{\text{Calls offered*}}$
>
> Calculation when determining an average answertime:
>
> **CALCULATION:** $\dfrac{\text{Total seconds in queue***}}{\text{Calls offered*}}$
>
> *includes calls abandoned by customer
> **includes calls abandoned by customer after 10 seconds
> (BellSouth does not apply this factor in service level equation)
> ***as measured at the switching center serving the operator positions

PUBLIC STAFF: In its July 3, 2002 filing, the Public Staff provided the following proposed uniform measurement procedures:

Measured quantity: The percentage of calls to all publicly available local DA telephone numbers each month that access a live DA operator within ten seconds from dialing the final digit of the DA telephone number or, in the case of companies that use an automated system, within ten seconds of the time that the system routes the call to a live DA operator or to a queue to await answer by a live DA operator.

Company measurement procedures:

(1) For calls routed directly to live DA operators without automated intervention: Each answertime measurement should begin immediately when the incoming call arrives at the switch serving the DA operator positions. Timing should continue until a physical talk path is

established between the end user and a live DA operator prepared to offer immediate assistance. The answertime for the call is the difference between these two time measurements.

(2) For calls initially routed to an automated menu: Answertime measurement should begin either at the moment the end user presses a key to route the call directly to a live operator or ten seconds after any prompt when the end user fails to interact with the automated system. The call must be routed to a live operator immediately after the end user has provided any requested city, state, or listing information to the system or immediately after the menu has queried the customer for any requested city, state, or listing information and received no response or an insufficient response within ten seconds. Timing should continue until a physical talk path is established between the end user and a live DA operator prepared to offer immediate assistance. The answertime for the call shall be the difference between these two time measurements.

The monthly performance figure reported to the Commission shall be calculated as follows:

$$\text{DA answertime: } 100 \times \frac{\text{Total number of calls with answertimes of 10.0 seconds or less}}{\text{Total calls made to DA and routed to live operators}}$$

Companies shall exclude from the numerator and denominator of this calculation data for any calls in which the end user fails to reach a live DA operator but terminates the call within ten seconds of the time the call either arrives at the switch serving the live DA operator positions (no automated intervention) or is directed to a live operator (calls initially routed to an automated menu). The "Total calls made to DA and routed to live operators" figure in the denominator of this formula shall include all other properly dialed DA calls that are routed to and prevented from reaching live DA operators.

Monthly reporting requirement: Percentages of DA calls from North Carolina end users answered within ten seconds by a live operator, for the following categories, as applicable:

Calls routed directly to live DA operators without automated intervention
Calls initially routed to an automated system
All DA calls

Figures shall be reported to the nearest tenth of a percent.

The Public Staff stated in its October 10, 2002 reply comments, concerning the breaking down of monthly DA calls into three categories – calls routed directly to live DA operators without automated intervention; calls initially routed to an automated system; and all DA calls, that the ITF has asserted that the Public Staff's proposal is arbitrary and unwarranted, and neglects the technical realities of companies' systems. The Public Staff noted that some companies use automated systems to initially answer DA calls, collecting location and listing information from a customer and then automatically routing these calls, in some cases, to live operators without further intervention by the customer.

The Public Staff believes that the ITF's comments on DA calls warrant further consideration, and recommended that the Commission require each ILEC or CLP that uses an automated answering system to provide directory assistance service to (1) file a copy of the entire automated script to the Commission and explain in detail how the system operates; and (2) explain exactly how an answertime measurement is obtained for each incoming DA call (starting and stopping points for the measurement, excluded data, and any other factors of importance).

DISCUSSION

As discussed in Operator "O" answertime above, the Commission believes that it is necessary to have a short evidentiary hearing to address the appropriate uniform reporting procedures for answertimes. The Commission notes that the Public Staff has even commented in its October 10, 2002 filing that certain issues concerning answertimes warrant further consideration, and the Commission believes that an evidentiary hearing at this point in time would be appropriate to allow for this further consideration.

The Commission finds it appropriate to conduct an evidentiary hearing on Wednesday, January 29, 2003 in which the ITF and the Public Staff will be allowed to present their positions on the appropriate uniform reporting procedures to be used for Operator "O" answertime, DA answertime, business office answertime, and repair service answertime. The ITF shall file its testimony on this issue no later than Friday, January 10, 2003, and the Public Staff shall file its testimony on this issue no later than Friday, January 24, 2003.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to conduct an evidentiary hearing on Wednesday, January 29, 2003 in which the ITF and the Public Staff will be allowed to present their positions on the appropriate uniform reporting procedures to be used for Directory Assistance answertime. The ITF shall file its testimony on this issue no later than Friday, January 10, 2003, and the Public Staff shall file its testimony on this issue no later than Friday, January 24, 2003.

4(c) - BUSINESS OFFICE ANSWERTIME

GCG/ITF: In its June 21, 2001 filing, the ITF provided the following proposed Uniform Measurement procedures:

R9-8(a) objective: 90% or more within 20 seconds or an Equivalent Average Answertime in seconds.

> Calls are measured during normal business hours. For calls to locations utilizing interactive voice response ("IVR") units, call timing begins when the customer selects an option that is routed to a service representative queue and stops when a representative answers the call.
>
> For calls to locations without IVR units, timing starts when entering the business office queue and stops when a representative answers the call. For companies using manual procedures, timing shall start at the time the calling party received ring back tone.

When IVR units are utilized:

CALCULATION: (Queries answered within 20 seconds including calls answered automatically + calls abandoned within 20 seconds)/Total business office queries

When IVR equipment is not involved:

CALCULATION: (Queries answered within 20 seconds + calls abandoned within 20 seconds/Total business office queries [BellSouth does not include calls abandoned within 20 seconds in its service level equation]

PUBLIC STAFF: In its July 3, 2002 filing, the Public Staff provided the following proposed uniform measurement procedures:

Measured quantity: The percentage of calls to all publicly available company business office telephone numbers each month that access a live business office representative within 20 seconds from dialing the final digit of the business office telephone number or, in the case of companies that use an automated system, within 20 seconds of the time the system routes the call to a live business office representative or to a queue to await answer by a live representative. Companies are expected to maintain live operators to handle incoming calls from customers for a minimum of nine hours per day Monday through Friday, excluding company holidays. Performance results shall reflect company operations during these days and hours only.

Company measurement procedures:

(1) For calls routed directly to live business office representatives without automated intervention: Each answertime measurement should begin as soon as the incoming call arrives at the switch serving the business office representatives' positions. Timing should continue until a physical talk path is established between the end user and a live business office representative prepared to offer immediate assistance. The answertime for the call is the difference between these two time measurements.

(2) For calls initially routed to an automated menu: Within 20 seconds after the menu begins, the automated system must explicitly offer the end user the opportunity to press a key on the telephone keypad and immediately exit the menu and have the call routed to a live business office representative. If the end user either presses a key to direct the call to a live representative or fails to respond to any menu prompt within ten seconds, the call must immediately be routed to a live representative. Answertime timing shall begin at the moment the end user presses the key or exactly ten seconds after any recorded prompt has finished playing and no response had been received from the end user and shall continue until a live business office representative prepared to offer immediate assistance answers the call.

The monthly performance figure reported to the Commission shall be calculated as follows:

$$\text{Business office answertime: } 100 \times \frac{\text{Total number of calls with answertimes of 20.0 seconds or less}}{\text{Total business office calls routed to live representatives}}$$

The numerator and denominator of this calculation shall reflect companies' performance on all business office calls attempted by or on behalf of North Carolina customers, during all hours when a business office call center is in operation with live operators receiving such calls. Companies shall exclude from both the numerator and denominator of this calculation data associated with (1) calls that do not involve automated intervention, during which the end user hangs up within 20 seconds of dialing the final digit of the business office number without receiving a response from a live business office representative, and (2) calls initially routed to an automated system, during which the end user either makes a menu selection to route the call to a live business office representative or waits on the line until the call is automatically routed to a live representative but terminates the call within 20 seconds without reaching a live representative. The "Total business office calls routed to live representatives" in the denominator of this formula shall include data for all other properly dialed business office calls which are routed to and prevented from reaching a live business office representative.

Monthly reporting requirement: Companies shall report the percentages of calls answered by live business office representatives within 20 seconds, to the nearest tenth of one percent.

DISCUSSION

As discussed above, the Commission believes that it is necessary to have a short evidentiary hearing to address the appropriate uniform reporting procedures for answertimes.

The Commission finds it appropriate to conduct an evidentiary hearing on Wednesday, January 29, 2003 in which the ITF and the Public Staff will be allowed to present their positions on the appropriate uniform reporting procedures to be used for Operator "O" answertime, DA answertime, business office answertime, and repair service answertime. The ITF shall file its testimony on this issue no later than Friday, January 10, 2003, and the Public Staff shall file its testimony on this issue no later than Friday, January 24, 2003.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to conduct an evidentiary hearing on Wednesday, January 29, 2003 in which the ITF and the Public Staff will be allowed to present their positions on the appropriate uniform reporting procedures to be used for Business Office answertime. The ITF shall file its testimony on this issue no later than Friday, January 10, 2003, and the Public Staff shall file its testimony on this issue no later than Friday, January 24, 2003.

4(d) - REPAIR ANSWERTIME

GCG/ITF: In its June 21, 2001 filing, the ITF provided the following proposed Uniform Measurement procedures:

R9-8(a) objective: 90% or more within 20 seconds or an Equivalent Average Answertime in seconds.

Measures calls placed 24 hours a day. Timing starts when entering the repair service queue and stops when a representative answers the call. For companies using manual procedures, timing starts at the time the calling party receives ring back tone.

CALCULATION: $$\frac{\text{Queries answered* - Calls delayed over 20 seconds**}}{\text{Queries answered*}}$$

*includes calls abandoned by customers
**includes calls abandoned by customer after 20 seconds
(BellSouth does not apply this factor in its service level equation)

PUBLIC STAFF: In its July 3, 2002 filing, the Public Staff provided the following proposed uniform measurement procedures:

Measured quantity: The percentage of calls to all publicly available company repair service telephone numbers each month that access a live repair service representative within 20 seconds from dialing the final digit of the repair service telephone number; or in the case of companies that use automated menu systems, within 20 seconds of the time the system routes the call to a live repair service representative or to a queue to await answer by a live representative. Live repair service representatives shall be available to answer incoming calls from end users 24 hours a day, seven days a week, every day of the year.

Company measurement procedures:

(1) For calls routed directly to live repair service representatives without automated intervention: Each answertime measurement should begin as soon as the incoming call arrives at the switch serving the repair service representatives' positions. Timing should continue until a physical talk path is established between the end user and a live repair service representative prepared to offer immediate assistance. The answertime for the call is the difference between these two time measurements.

(2) For calls initially routed to an automated menu: Within 20 seconds after the menu begins, the automated system must explicitly offer the end user the opportunity to press a key on the telephone keypad and immediately exit the menu and have the call routed to a live repair service representative. If the end user either presses a key to direct the call to a live representative or fails to respond to any menu prompt within ten seconds, the call must immediately be routed to a live representative. Answertime timing shall begin at the moment the end user presses the key or exactly ten seconds after a recorded prompt has finished playing and received no response from the end user, and continue until a live repair service representative prepared to offer immediate assistance answers the call.

The monthly performance figure reported to the Commission shall be calculated as follows:

Repair service answertime: $$100 \times \frac{\text{Total number of calls with answertimes of 20.0 seconds or less}}{\text{Total repair service calls routed to live representatives}}$$

The numerator and denominator of this calculation shall reflect companies' performance on all repair service calls attempted by or on behalf of North Carolina customers. Companies shall exclude from both the numerator and denominator of this calculation data associated with (1) calls that do not involve automated intervention, during which the end user hangs up within 20 seconds of dialing the final digit of the repair service number without receiving a response from a live repair service representative, and (2) calls initially routed to an automated menu, during which the end user either makes a selection to route the call to a live repair service representative or waits on the line until the call is automatically routed to a live representative but terminates the call within 20 seconds without reaching a live representative. The "Total repair service calls routed to live representatives" figure in the denominator of this formula shall include data for all other properly dialed repair service calls which are routed to and prevented from reaching a live repair service representative.

Monthly reporting requirement: Companies shall report the percentages of calls answered by live repair service representatives within 20 seconds, to the nearest tenth of one percent.

DISCUSSION

As discussed above, the Commission believes that it is necessary to have a short evidentiary hearing to address the appropriate uniform reporting procedures for answertimes.

The Commission finds it appropriate to conduct an evidentiary hearing on Wednesday, January 29, 2003 in which the ITF and the Public Staff will be allowed to present their positions on the appropriate uniform reporting procedures to be used for Operator "O" answertime, DA answertime, business office answertime, and repair service answertime. The ITF shall file its testimony on this issue no later than Friday, January 10, 2003, and the Public Staff shall file its testimony on this issue no later than Friday, January 24, 2003.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to conduct an evidentiary hearing on Wednesday, January 29, 2003 in which the ITF and the Public Staff will be allowed to present their positions on the appropriate uniform reporting procedures to be used for Repair Service answertime. The ITF shall file its testimony on this issue no later than Friday, January 10, 2003, and the Public Staff shall file its testimony on this issue no later than Friday, January 24, 2003.

4(e) - INITIAL CUSTOMER TROUBLE REPORTS

GCG/ITF: In its June 21, 2001 filing, the ITF provided the following proposed Uniform Measurement procedures:

R9-8(a) objective: 4.75 or less per 100 access lines.

Excludes troubles on nonregulated services.

Excludes subsequent trouble reports.

CALCULATION: (Trouble reports / Access lines) x 100

PUBLIC STAFF: In its July 3, 2002 filing, the Public Staff provided the following proposed uniform measurement procedures:

Trouble Reports – General Considerations

A trouble report is defined as "any report from a subscriber or end user of telephone service to the telephone company indicating improper functioning or defective conditions with respect to the operation of telephone facilities over which the telephone company has control." Such reports shall be date and time stamped immediately upon receipt and date and time stamped again immediately after they have been cleared by company personnel.

Reported troubles that involve different access lines shall be regarded as separate troubles, even if the access lines terminate at the same premises, and/or result from a common cause, such as damaged cable or defective common equipment at a central office.

Subsequent reports and duplicate reports of previously reported troubles that have not been cleared by the company shall not be included in either initial or repeat trouble report totals.

Initial Customer Trouble Reports

Measured quantity: The number of initial troubles reported by telephone company subscribers in proportion to the number of total company access lines.

Company measurement procedures: Companies should continuously track the initial trouble reports that are received by their trouble reporting center(s). The statistic reported to the Commission shall be computed by taking the count of initial troubles reported in a given area between 12:00 midnight at the beginning of the first day of the calendar month and 12:00 midnight at the end of the last day of the same month, dividing this figure by the total access lines in service in that same area at the end of the last day of the month, and multiplying the quotient by 100.

$$\frac{\%\text{ initial troubles per}}{100\text{ access lines}} = \frac{100\text{ x initial troubles reported during month}}{\text{Total access lines in service at the end of month}}$$

Troubles associated with nonregulated equipment, products, or services, and subsequent reports of the same trouble that are made after the initial report has been received but before the company has cleared the trouble condition should be excluded from the numerator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for initial trouble reporting purposes.

In the event a company systematically excludes the initial troubles reported by a class or classes of customers (for example, large business customers) from the troubles counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its monthly service quality report any deviation between the access line count used for monthly reporting of initial troubles per 100 access lines and the total access line count which it furnishes each month in its access line report.

Monthly reporting requirement: All companies shall file statistics on initial customer trouble reports per 100 total access lines. Figures shall be reported to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange exceeds 4.75 per 100 access lines, a brief explanation should be provided for the failure to meet this objective.

DISCUSSION

The Commission notes that the ITF and the Public Staff generally agree on the appropriate calculation for Initial Customer Trouble Reports. As an example, with 2,000 trouble reports for a company with 350,000 access lines, the proposed calculations of the ITF and the Public Staff would produce the same result:

ITF: (Trouble reports / Access lines) x 100
(2,000/350,000) x 100 = .57

Public Staff: % initial troubles per = 100 x initial troubles reported during month
100 access linesTotal access lines in service at the end of month

$$\frac{100 \times 2{,}000}{350{,}000} = .57$$

However, the Public Staff's recommended measurement procedure is much more detailed, and therefore, superior to the procedure proposed by the ITF. Both Parties have recommended that the calculation exclude nonregulated services and subsequent trouble reports. Therefore, the Commission finds it appropriate to adopt the measurement procedure proposed by the Public Staff for Initial Customer Trouble Reports.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to adopt the measurement procedure recommended by the Public Staff for Initial Customer Trouble Reports.

4(f) - REPEAT TROUBLE REPORTS WITHIN 30 DAYS

GCG/ITF: In its June 21, 2001 filing, the ITF provided the following proposed Uniform Measurement procedures:

R9-8(a) objective: 1.0 report or less per 100 access lines.

Excludes troubles on nonregulated services and excludes troubles not related to the original report.

CALCULATION: (Repeat trouble reports/Access lines) x 100

PUBLIC STAFF: In its July 3, 2002 filing, the Public Staff provided the following proposed uniform measurement procedures:

Measured quantity: The number of repeat troubles reported by telephone company subscribers in proportion to the number of company access lines.

Company measurement procedures: Companies should continuously track the repeat trouble reports that are reported to their trouble reporting center(s). A repeat trouble is a trouble reported on an access line for which another trouble or troubles has been reported within the preceding 30 days and subsequently cleared. The statistic reported to the Commission shall be computed by taking the count of repeat troubles reported in a given area between 12:00 midnight at the beginning of the first day of the calendar month and 12:00 midnight at the end of the last day of the same month, dividing this figure by the total access lines in service in that same area at the end of the last day of the month, and multiplying the quotient by 100.

$$\frac{\text{\% of repeat troubles per}}{\text{100 access lines}} = \frac{\text{100 x repeat troubles reported during month}}{\text{Total access lines in service at end of month}}$$

Repeat troubles associated with nonregulated equipment, products, or services shall be excluded from the count appearing in the numerator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for repeat trouble reporting purposes.

In the event that a company systematically excludes the repeat troubles reported by a class or classes of customers (for example, large business customers) from the troubles counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its monthly service quality report any deviation between the access line count used for monthly reporting of repeat troubles per 100 access lines and the total access line count which it furnishes each month in its access line report.

Monthly reporting requirement: All companies shall file statistics on repeat customer trouble reports per 100 access lines. Figures shall be reported to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange exceeds 1.0 per 100 access lines, a brief explanation should be provided for the failure to meet this objective.

DISCUSSION

The Commission notes that the ITF and the Public Staff generally agree on the appropriate calculation for Repeat Trouble Reports Within 30 Days. As an example, with 100 repeat trouble reports for a company with 350,000 access lines, the proposed calculations of the ITF and the Public Staff would produce the same result:

ITF: (Repeat trouble reports/Access lines) x 100
(100 / 350,000) x 100 = .029

Public Staff: $\text{\% of repeat troubles per 100 access lines} = \frac{\text{100 x repeat troubles reported during month}}{\text{Total access lines in service at end of month}}$

$$\frac{100 \times 100}{350{,}000} = .029$$

However, the Public Staff's recommended measurement procedure is much more detailed, and therefore, superior to the procedure proposed by the ITF. Both Parties have recommended that the calculation exclude nonregulated services and troubles not related to the original report. Therefore, the Commission finds it appropriate to adopt the measurement procedure proposed by the Public Staff for Repeat Trouble Reports Within 30 Days.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to adopt the measurement procedure recommended by the Public Staff for Repeat Trouble Reports Within 30 Days.

4(g) - OUT-OF-SERVICE TROUBLES CLEARED WITHIN 24 HOURS

GCG/ITF: In its June 21, 2001 filing, the ITF provided the following proposed Uniform Measurement procedures:

R9-8(a) objective: 95% or more.

> Based on the inability to originate or receive calls. Excludes customer requested appointments beyond 24 hours.
>
> **CALCULATION:** $\frac{\text{Out-of-service troubles cleared within 24 hours}}{\text{Total out-of-service troubles}}$

PUBLIC STAFF: In its July 3, 2002 filing, the Public Staff provided the following proposed uniform measurement procedures:

Measured quantity: The percentage of total out-of-service troubles that are cleared within 24 hours during the reporting month.

Company measurement procedures: Companies should continuously track the out-of-service troubles (troubles involving inability to make outgoing calls or receive incoming calls, or line impairments so severe that they render voice communication impossible) that are reported by company subscribers and end users. Each out-of-service trouble report should be date and time stamped immediately upon receipt and date and time stamped immediately after the trouble condition is cleared. The time taken to clear the trouble is the difference between these two times. To obtain the reported statistic, the company shall count the number of out-of-service troubles that were cleared during the calendar month and within 24 hours of their receipt and divide this figure by the total number of out-of-service trouble reports cleared during the calendar month to obtain the percentage cleared within 24 hours:

$$\%\ \text{out-of-service troubles cleared within 24 hours} = \frac{100 \text{ x total out-of-service troubles cleared within 24 hours during month}}{\text{Total out-of-service troubles cleared during month}}$$

Troubles associated with nonregulated equipment, products, or services and troubles that do not involve out-of-service conditions shall be excluded from the troubles counted in the numerator and denominator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for out-of-service trouble reporting purposes.

Monthly reporting requirement: All companies shall file statistics on out-of-service troubles cleared within 24 hours of receipt, reported to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange is below 95%, a brief explanation should be provided for the failure to meet this objective.

DISCUSSION

The Commission notes that the ITF and the Public Staff generally agree on the appropriate calculation for Out-of-Service Troubles Cleared Within 24 Hours. As an example, with 600 out-of-service troubles, 450 of which were cleared within 24 hours, the proposed calculations of the ITF and the Public Staff would produce the same result:

ITF: $$\frac{\text{Out-of-service troubles cleared within 24 hours}}{\text{Total out-of-service troubles}}$$

$$\frac{450}{600} = 75\%$$

Public Staff: $$\%\ \text{out-of-service troubles cleared within 24 hours} = \frac{100 \text{ x total out-of-service troubles cleared within 24 hours during month}}{\text{Total out-of-service troubles cleared during month}}$$

$$\frac{100 \text{ x } 450}{600} = 75\%$$

The Commission believes that the Public Staff's recommended measurement procedure is much more detailed, and therefore, superior to the procedure proposed by the ITF. The Commission also agrees with the Public Staff's expanded definition that an out-of-service trouble could also be line impairment so severe that it renders voice communication impossible.

However, the Commission does believe that the ITF's proposed exclusion that the measure not reflect customer requested appointments beyond 24 hours is appropriate.

Therefore, the Commission finds it appropriate to adopt the Public Staff's proposed measurement procedures with the exception of inserting an exclusion for circumstances wherein a customer requests an appointment beyond 24 hours.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to adopt the Public Staff's proposed measurement procedures for Out-of-Service Troubles Cleared Within 24 Hours with the exception of inserting an exclusion for circumstances wherein a customer requests an appointment beyond 24 hours.

4(h) - REGULAR SERVICE ORDERS COMPLETED WITHIN 5 WORKING DAYS

GCG/ITF: In its June 21, 2001 filing, the ITF provided the following proposed Uniform Measurement procedures:

R9-8(a) objective: 90% or more.

Excludes appointments scheduled beyond 5 days at the customer's request.

Excludes customer delays and ESSX/Centrex orders.

CALCULATION: $\dfrac{\text{Service orders completed in 5 days}}{\text{Total service orders}}$

PUBLIC STAFF: In its July 3, 2002 filing, the Public Staff provided the following proposed uniform measurement procedures:

Measured quantity: The percentage of regular service orders that are completed during any calendar month within five working days of receipt by the company.

Company measurement procedures: Companies should continuously track the receipt and completion dates and times of all regular service orders (service orders placed by residential customers and by business customers with five or fewer access lines). Each regular service order should be date and time stamped immediately upon receipt by the company and date and time stamped immediately after the order has been completed. The reported statistic shall be calculated as follows:

$$\text{\% of regular service orders completed within 5 working days} = \frac{\text{100 x orders completed during month within 5 working days of receipt}}{\text{Total orders completed during month}}$$

For purposes of this calculation, "working days" shall be considered to be all days except Sundays, New Year's Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Orders for nonregulated equipment, products, or services shall be excluded from both the numerator and denominator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for regular service order reporting purposes.

Monthly reporting requirement: All companies shall report the percentage of regular service orders completed during the calendar month within five working days of receipt by the company. Figures shall be reported to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange is below 90.0%, a brief explanation should be provided for the failure to meet this objective.

DISCUSSION

The Commission notes that the ITF and the Public Staff generally agree on the appropriate calculation for Regular Service Orders Completed Within 5 Days. As an example, with 100 total service orders, 60 of which were completed within 5 working days, the proposed calculations of the ITF and the Public Staff would produce the same result:

ITF: $\dfrac{\text{Service orders completed in 5 days}}{\text{Total service orders}}$

$$\frac{60}{100} = 60\%$$

Public Staff: $\text{\% of regular service orders completed within 5 working days} = \dfrac{100 \times \text{orders completed during month within 5 working days of receipt}}{\text{Total orders completed during month}}$

$$\frac{100 \times 60}{100} = 60\%$$

The Commission believes that the Public Staff's recommended measurement procedure is much more detailed and, therefore, superior to the procedure proposed by the ITF. The Commission also agrees with the Public Staff's definition of working days.

However, the Commission does believe that the ITF's proposed exclusions for appointments scheduled beyond 5 days at the customer's request and customer-caused delays are appropriate.

Therefore, the Commission finds it appropriate to adopt the Public Staff's proposed measurement procedures with the exception of inserting exclusions for circumstances wherein (1) a customer requests an appointment beyond 5 days and (2) the delay is caused by the customer.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to adopt the Public Staff's proposed measurement procedures for Regular Service Orders Completed Within 5 Working Days with the exception of inserting exclusions for circumstances wherein (1) a customer requests an appointment beyond 5 days and (2) the delay is caused by the customer.

4(i) - NEW SERVICE INSTALLATION APPOINTMENTS NOT MET FOR COMPANY REASONS

GCG/ITF: In its June 21, 2001 filing, the ITF provided the following proposed Uniform Measurement procedures:

R9-8(a) objective: 5% or less

Includes dial tone orders only. Excludes appointments missed due to customer reasons and ESSX/Centrex orders.

CALCULATION: $\dfrac{\text{Appointments set} - \text{appointments met}}{\text{Appointments set}}$

PUBLIC STAFF: In its July 3, 2002 filing, the Public Staff provided the following proposed uniform measurement procedures:

Measured quantity: The percentage of customer appointments that are scheduled to be completed during the calendar month but are missed due to company reasons.

Company measurement procedures: Companies shall maintain a record of the customer appointments that are scheduled to be completed during each calendar month. The company shall track the scheduled dates and times for these appointments and the actual completion dates and times and, for those appointments that are not kept, shall maintain a detailed record of the reason(s) for failure to keep them. The percentage of customer appointments missed during the calendar month due to company reasons shall be calculated as follows:

$$\text{\% of customer appointments not met for company reasons} = \frac{100 \times \text{customer appts not completed because of company reasons}}{\text{Customer appointments scheduled to be completed}}$$

Any customer appointment missed due to customer actions shall be excluded from the numerator of this formula. Appointments associated with installation or moving of, or changes or repairs to, nonregulated equipment, products, or services shall be excluded from the numerator and denominator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for customer appointments reporting purposes.

Companies, at a minimum, shall offer customers scheduling premises appointments the opportunity to select from a set of two or more four-hour appointment "windows" that will be made available for each day that appointments are being scheduled.

Monthly reporting requirement: Companies shall file the percentage of total customer appointments not met during the month for company reasons to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange exceeds 5.0%, a brief explanation should be provided for the failure to meet this objective.

DISCUSSION

The Commission notes that the ITF and the Public Staff generally agree on the appropriate calculation for New Service Installation Appointments Not Met for Company Reasons. As an example, with 2,000 appointments set and 1,750 met (i.e., 250 not met because of company reasons), the proposed calculations of the ITF and the Public Staff would produce the same result:

ITF: $$\frac{\text{Appointments set} - \text{appointments met}}{\text{Appointments set}}$$

$$\frac{2{,}000 - 1{,}750}{2{,}000} = 12.5\%$$

Public Staff: $$\text{\% of customer appointments not met for company reasons} = \frac{100 \times \text{customer appts not completed because of company reasons}}{\text{Customer appointments scheduled to be completed}}$$

$$\frac{100 \times 250}{2{,}000} = 12.5\%$$

The Commission believes that the Public Staff's recommended measurement procedure is much more detailed, and therefore, superior to the procedure proposed by the ITF. Therefore, the Commission finds it appropriate to adopt the Public Staff's proposed measurement procedures.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to adopt the Public Staff's proposed measurement procedure for New Service Installation Appointments Not Met for Company Reasons.

4(j) - HELD ORDERS NOT COMPLETED WITHIN 30 DAYS

GCG/ITF: In its June 21, 2001 filing, the ITF provided the following proposed Uniform Measurement procedures:

R9-8(a) objective: 0.1% or less of total access lines.

Excludes customer-requested appointments beyond 30 days.
Excludes customer-caused delays and ESSX/Centrex orders.

CALCULATION: $$\frac{\text{Count of all service orders delayed beyond 30 days}}{\text{Total access lines}}$$

The ITF noted that the procedures outlined above are provided in accordance with Commission Order and apply to basic exchange services only, i.e. excluding Special Services and Major Accounts where feasible to technically separate results.

PUBLIC STAFF: In its July 3, 2002 filing, the Public Staff provided the following proposed uniform measurement procedures:

Measured quantity: The number of new access line orders that, at any time during the calendar month, have been held for over 30 calendar days following receipt, in proportion to the total company access lines in service.

Company measurement procedures: Companies shall date and time stamp each new service order immediately upon receipt and shall identify and count all orders during the calendar month that have not been completed within 30 days from the date and time they were received. Each such order shall be counted as a new service held order not completed within 30 days. The total number of new service held orders not completed within 30 days shall be reported to the Commission as a percentage of total company access lines as of midnight at the end of the last day of the month:

$$\text{\% of new service held orders not completed within 30 days} = \frac{100 \text{ x orders not completed within 30 days at any time during month}}{\text{Total access lines in service at the end of month}}$$

Delays caused by the customer that prevent the company from completing an order within 30 days of receipt shall be excluded from the numerator of this formula.

New service orders for nonregulated equipment, products, or services shall be excluded from the numerator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for new service held order reporting purposes.

In the event a company systematically excludes the new service held orders for a class or classes of customers (for example, large business customers) from the held orders counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its monthly service quality report any deviation between the access line count used for monthly reporting of held orders and the total access line count which it furnishes each month in its access line report.

Monthly reporting requirement: Companies shall report the percentage of new service held orders not completed within 30 days, to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange is above 0.1% of total access lines, a brief explanation should be provided for the failure to meet this objective.

DISCUSSION

The Commission notes that the ITF and the Public Staff generally agree on the appropriate calculation for Held Orders Not Completed Within 30 Days. As an example, with 100 service orders delayed more than 30 days and 350,000 total access lines, the proposed calculations of the ITF and the Public Staff would produce the same result:

ITF: $\frac{\text{Count of all service orders delayed beyond 30 days}}{\text{Total access lines}}$

$$\frac{100}{350{,}000} = .03$$

Public Staff: % of new service held orders not completed within 30 days = $\frac{100 \times \text{orders not completed within 30 days at any time during month}}{\text{Total access lines in service at the end of month}}$

$$\frac{100 \times 100}{350{,}000} = .03$$

The Commission believes that the Public Staff's recommended measurement procedure is much more detailed, and therefore, superior to the procedure proposed by the ITF. The Commission agrees that the language in the Public Staff's proposal concerning delays caused by the customer that prevent the company from completing an order should be clarified to include instances where a customer specifically requests completion of an order beyond 30 days. Overall, the Commission finds it appropriate to adopt the Public Staff's proposed measurement procedures.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to adopt the Public Staff's proposed measurement procedure for Held Orders Not Completed Within 30 Days, but clarifying that the language in the Public Staff's proposal concerning delays caused by the customer that prevent the company from completing an order should include instances where a customer specifically requests completion of an order beyond 30 days.

▶ ISSUE NO. 5: Should the service objectives outlined in Commission Rule R9-8 be applicable only to residential services?

GCG/ITF: The ITF argued in its November 2001 Report that given this opportunity to examine Rule R9-8 in light of how competition has developed over the past several years, it is the opinion of the ITF that the R9-8 objectives which are service specific should apply only to residential service. The ITF maintained that such an approach is appropriate because meaningful competition is, ultimately, the best consumer protection device. The ITF noted that in this regard, it may be appropriate for the time being to retain some service quality standards and reporting mechanisms with respect to residential service until more widespread competition develops in this market. The ITF maintained that reasonable service quality objectives will serve to ensure baseline service standards for residential service so that all consumers can expect their provider of basic local exchange service to be subject to fundamental, uniform service objectives. However, the ITF argued that with respect to more competitive services, the Commission should steadfastly continue down the path of promoting consumer choice, as opposed to imposing unnecessary regulations that may serve to inhibit competition, so that the market will ensure that customers are able to bargain for and receive the level of service they desire.

The ITF asserted that most importantly, business customers that are dissatisfied with the level of service they receive from a particular provider can typically find another provider, using the existence of the competitive marketplace as leverage to obtain the level of service they seek. The ITF noted that the consumer's power to choose a new provider is, by itself, a powerful incentive for companies to maintain quality service.

The ITF maintained that the unintended consequence of Rule R9-8 in its current form is to undermine efficient competition and inhibit customer choice. The ITF asserted that many business service offerings are negotiated, meaning that the business customer and provider can tie costs to service and adjust standards upward or downward as mutually agreed upon. The ITF stated that if business customers are willing to trade some degree of service quality for a concomitant reduction in price, they should have that opportunity. The ITF noted that service quality is just as much a point of competition among business service providers as price, but the Rule R9-8 objectives effectively and inappropriately eliminate that point of competition from the business services marketplace. The ITF asserted that this approach dampens competition by dissuading innovation, discouraging experimentation, and cutting off business opportunities.

The ITF maintained that to the extent that the Commission rejects this industry proposal and concludes that the service specific quality standards of Rule R9-8 should continue to apply to both residential and business service, the ITF emphatically urged the Commission to rely on the Uniform Measurement Procedures filed by the ITF on June 21, 2001 for its application of rules to residence and business customers and to modify the service standards as recommended by the GCG.

In its May 31, 2002 filing, the ITF noted that the Public Staff has proposed to maintain or increase reporting burdens. The ITF stated that the Public Staff recommended rejecting the ITF's proposal to limit Rule R9-8's service-specific objectives to just residential services and to link monthly reporting obligations to complaint levels. The ITF argued that the Public Staff offered no effective rebuttal to the ITF's rationale for these proposals.

The ITF asserted that the Public Staff has tried to second-guess the market. The ITF maintained that the Public Staff "believes that many business customers in North Carolina still lack...alternatives" for their services. The ITF maintained that the Public Staff did not cite any facts to support this belief. Indeed, the ITF argued that the Public Staff's statements here are at odds with its April 2002 report, in which it stated that CLPs serve nearly 20% of the business market and that the CLPs' "business market share continues to reflect significant growth."

The ITF also noted that the Public Staff, likewise, stated in its Proposed Order in the BellSouth 271 proceedings that "barriers to entry have been removed and that the local markets are open to competition as required by the Act."

The ITF argued that because competitive alternatives are available to many business customers, it is no longer necessary or productive to report objectives for business services. The ITF maintained that business customers dissatisfied with the service they receive from one provider can find another one that will better meet their needs. Moreover, the ITF stated that removing Commission service quality mandates will allow business customers to bargain for the level of service they desire. The ITF maintained that if business customers are willing to trade some degree of service quality for price reductions, they should have that opportunity. The ITF argued that the Public Staff's recommendation to maintain the Rule R9-8 objectives for business service suppresses competition by discouraging innovation and experimentation.

The ITF maintained in its August 21, 2002 reply brief that the Public Staff proposed separate reporting categories for business, residential, and total customers for the following measures: business office answertime, repair service answertime, out-of-service troubles cleared within 24 hours, regular service orders completed within 5 working days, customer appointments not met for company reasons, and new service held orders not completed within 30 days.

The ITF stated that under the Public Staff's proposals, then, not only would companies have to track and report results by exchange, but also by residence and business. The ITF maintained that like the Public Staff's other suggestions to expand reporting burdens, this one is unjustified by any evidence of need. In fact, the ITF argued, the Public Staff offers *no reason at all* for this new reporting burden. The ITF stated that in particular, rather than expanding regulatory requirements relative to business markets, where competition is most vigorous, the trend should be toward relaxing direct regulation. The ITF recommended, for example, lifting answertime prescriptions for calls to business office centers. The ITF maintained that this action would moot the Public Staff's recommendation for separate business and residential reporting for answertime measures.

BELLSOUTH/VERIZON: On December 6, 2001, BellSouth and Verizon filed a letter with the Commission stating that, as participants on the ITF, they agree with and support all aspects of the ITF's November 2001 filing in principle. However, BellSouth and Verizon noted that with regard to the application of the service standards to residence customers only, both BellSouth and Verizon have identified a number of technical problems associated with reporting some of the network results on a residence only basis. BellSouth and Verizon stated that their systems, which track and accumulate the network service data, are designed and programmed in such a way that the data is combined for residence and business services. BellSouth and Verizon maintained that the data cannot be accurately segregated by class of service. Therefore, BellSouth and Verizon stated that while they believe as the ITF indicated that the uniform industry standards should apply to residence customers only, both BellSouth and Verizon will continue to report the data combined for both residence and business service.

PUBLIC STAFF: The Public Staff noted in its April 5, 2002 filing that the ITF proposed to limit the application of Rule R9-8 to residential customers, on the grounds that business customers who are dissatisfied with the quality of telephone service provided by one company could typically switch to a provider that offers better service. The Public Staff maintained that many business customers in North Carolina still lack such alternatives and that many may not see effective competition for the foreseeable future.

The Public Staff also noted that the ITF suggested that companies and their prospective customers should be able to negotiate reductions in service quality in return for reductions in price. The Public Staff maintained, however, if customers were agreeable to such tradeoffs, it does not necessarily follow that they would want the Commission to authorize the reductions in service quality standards proposed by the ITF prior to any negotiations. The Public Staff noted that judging from the complaints received by the Public Staff's Consumer Services Division, many business customers in North Carolina are dissatisfied with the service they are currently receiving from both the LECs and the CLPs.

In Attachment A, page 2 of the Public Staff's July 3, 2002 filing, the Public Staff proposed that performance results for business office answertime, repair service answertime, out-of-service troubles cleared within 24 hours, regular service orders completed within

5 working days, customer appointments not met for company reasons, and new service held orders not completed within 30 days should be reported separately for the following categories of customers: (1) North Carolina business customers; (2) North Carolina residence customers; and (3) All North Carolina customers.

The Public Staff argued in its October 10, 2002 reply comments that telephone companies are prohibited by G.S. 62-140(a) from maintaining unreasonable differences as to services among classes of service. Therefore, the Public Staff argued that telephone customers are entitled to the same quality of service irrespective of whether they are served over residential or business lines. However, the Public Staff stated that because it is more lucrative to serve business customers than residential customers, ILECs and CLPs have a strong incentive to provide business customers preferential treatment with respect to service performance. The Public Staff maintained that this issue came to light during BellSouth's Section 271 hearing, when, under cross-examination, BellSouth witness Ainsworth conceded that the answertimes for residential customers were over eight times longer than those experienced by business customers in July 2001. The Public Staff noted that it does not have sufficient information from other companies to determine whether this is a generic problem. The Public Staff argued that the only way to determine whether such disparities in service quality exist and enable the Commission to address the problem is to require separate reporting for business, residential, and total lines.

The Public Staff maintained that the actual burden that would be imposed upon companies by these additional reporting requirements is minimal. The Public Staff noted that in the case of Business Office and Repair Service Answertimes, large companies typically require residential and business customers to call different telephone numbers to access their respective call center representatives. The Public Staff noted that, for example, BellSouth's Raleigh telephone directory instructs its residence customers to dial 611 and business customers to dial 780-2222 to access repair service. The Public Staff maintained that each call is routed to a different call center, or group of call centers. Therefore, the Public Staff maintained, BellSouth should easily be able to obtain separate business and residential results by determining the results for each call center.

The Public Staff noted that with respect to the remaining four objectives, since each trouble report, service order, customer appointment, and held order is directly associated with a particular telephone number or numbers, companies should be able to readily differentiate between business and residential customers by simply determining whether the number is associated with a business or residential line.

The Public Staff stated that, nevertheless, if a company believes that reporting separate business and residential results would be unduly burdensome, it should be allowed to describe specifically the burdens it would incur in providing this information so that the Commission can decide whether the additional reporting requirement is justified. The Public Staff asserted that if the companies can show that service quality differences do not exist among residential and business customers, the Public Staff is willing to reconsider its recommendation.

DISCUSSION

The Commission does not believe that the ITF's proposal to limit Rule R9-8 to residential services is appropriate. The Commission agrees with the Public Staff that many business customers in North Carolina lack alternative local service providers and that many may not see effective competition for the foreseeable future. The Commission also agrees with the Public Staff's observation that ILECs and CLPs have a strong incentive to provide business customers preferential treatment with respect to service performance.

The Commission notes that the ITF argued that many business service offerings are negotiated, meaning that the business customer and provider can tie costs to service and adjust standards upward or downward as mutually agreed upon. The ITF further stated that if business customers are willing to trade some degree of service quality for a concomitant reduction in price, they should have that opportunity. The Commission agrees with the ITF on this point and notes that notwithstanding the conclusions reached in this Order, companies are allowed to enter into such voluntary, negotiated agreements under contract service arrangements (CSAs).

The Commission finds it appropriate to alter Rule R9-8 to require companies to reflect results on objectives based on business lines, residential lines, and total North Carolina lines for Measures 10, 11, 14, 15, 16, and 17. Therefore, for each of these measures, a company would report (1) the result for residential lines; (2) the result for business lines; and (3) the result for total North Carolina lines. The Commission finds it appropriate to require this reporting for a period of one year and, at the end of a one-year period, review this issue again to determine if it is still appropriate. The Commission further specifies that companies that cannot separate an objective should provide a detailed footnote in each monthly report which outlines the exact reasons why each particular objective cannot be separated by residential and business access lines.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to deny the ITF's proposal to limit applicability of the service standards outlined in Rule R9-8 to only residential customers. The Commission further finds it appropriate to alter Rule R9-8 to require companies to reflect results for Measures 10, 11, 14, 15, 16, and 17 based on (1) residential lines; (2) business lines; and (3) total North Carolina lines. The Commission will require this reporting for a period of one year and, at the end of a one-year period, will review this issue again to determine if it is still appropriate.

► **ISSUE NO. 6: Should companies report data only after a certain threshold level of customer complaints are filed with the Consumer Services Division of the Public Staff?**

GCG/ITF: The GCG recommended in the November 2001 Final Report of the ITF that the Commission modify Rule R9-8 so that the reporting requirement is **only initiated if a company meets a complaint threshold**. The ITF stated that consistent with the general principle of adopting consumer protection mechanisms which are important and relevant to today's customers and which are not detrimental to competition, the ITF recommends that the Commission amend the reporting requirement for Rule R9-8(d) to only require monthly reports to be filed with the Commission when a company exceeds a defined threshold of consumer complaints. Specifically, the ITF proposed that only companies that receive a certain level of complaints concerning service quality for two consecutive months should be required to routinely report their compliance with the Rule R9-8 objectives to the Commission. The ITF provided the following recommendation for illustrative purposes:

Number of Access Lines	Threshold Reporting Level
1 to 1,000	5 complaints
1,000+ to 250,000	1% of access lines
250,000+ to 1 million	.1% of access lines
1 million +	.01% of access lines

The ITF explained that once this threshold is met, the company would be required to file monthly compliance reports pursuant to Rule R9-8(d) for a one-year period of time. The ITF stated that to monitor compliance with this threshold requirement, companies would track complaints relating to service quality based on information routinely received from the Public Staff's Consumer Services Division.

The ITF argued that limiting the reporting requirement in this manner will serve the purpose of targeting the burden of reporting to those companies that demonstrate a need for such a requirement while not imposing the burden on companies that do not demonstrate such a need. The ITF maintained that the monthly reporting requirement can constitute a significant burden on telecommunications providers, particularly on smaller companies, because they require the devotion of scarce resources to measuring and reporting tasks on an ongoing basis. The ITF asserted that limiting the reporting requirement to the companies demonstrating a threshold level of complaints would not in any way compromise the underlying substantive requirements of Rule R9-8 because a company exempt from filing the monthly compliance report because it did not meet the threshold level of complaints would nonetheless be required to comply with the substantive requirements of Rule R9-8. Therefore, the ITF argued that adoption of this threshold proposal would serve the beneficial purpose of targeting the regulatory reporting burden on those companies generating an established level of complaints while, at the same time, leaving in place the underlying, substantive service quality standards.

In its May 31, 2002 filing, the ITF argued that the Public Staff's refusal to consider using complaint levels as a trigger for reporting obligations is misguided. The ITF noted the Public Staff stated that it "believes that even small numbers of complaints may sometimes indicate serious problems with service quality." The ITF maintained that why the Public Staff harbors this belief is not clear. The ITF stated that in the experience of the ITF members, if there is a serious service quality problem, both the company and the Commission will hear about it from customers.

The ITF stated that in an attempt to "demonstrate the significant problems" with the ITF's suggested complaint trigger, the Public Staff uses an example of applying the suggested threshold reporting level of 1% of access lines to ALLTEL Carolina, Inc., which has about 236,000 access lines. The ITF argued that because ALLTEL's actual reported complaints (244) over two years are substantially lower than the threshold complaint level required to trigger ALLTEL's reporting obligation under the ITF's proposal, the Public Staff concluded there is a problem with that proposal. In other words, the ITF stated, the complaint threshold suggestion is *per se* unacceptable because ALLTEL would not have had to file reports over the two years in the example. The ITF asserted that even assuming every complaint were closed as a rule infraction, an average yearly total of just 122 complaints of all types out of 236,000 access lines *should* warrant relaxation of reporting requirements. But the ITF maintained that the Public Staff's position seems to be that reports should always be filed, or there is something wrong with the rule.

The ITF argued that its proposal is in the public interest because it imposes the reporting burden only on those companies that demonstrate a need for close monitoring. The ITF explained that for other companies, the cost and effort involved in compiling reports is not justified, and their resources are better directed to activities with more direct consumer benefits.

Finally, the ITF emphasized that, regardless of whether a company is required to report Rule R9-8's objectives, it will nevertheless remain subject to those objectives.

PUBLIC STAFF: In its April 5, 2002 filing, the Public Staff addressed the ITF's suggestion to use a complaint threshold, based on individual company access line counts, as a basis for deciding whether companies should be required to routinely file monthly service quality reports. The Public Staff commented that even small numbers of complaints may sometimes indicate serious problems with service quality. The Public Staff noted that under the ITF's proposal, if the Public Staff's Consumer Services Division received a monthly count of service quality complaints against a company that exceeded a preset threshold level for two successive months, the company would be required to file monthly reports on its performance on all service objectives for a one-year period.

The Public Staff maintained that a simple example demonstrates the significant problems with this approach. The Public Staff noted that for ALLTEL Carolina, Inc., which had roughly 236,000 access lines in service in December 2001, the minimum number of service quality complaints that would have been required to trigger automatic reporting would have been 2,360 complaints filed each month for two successive months. The Public Staff noted that this monthly count is approximately ten times the total number of complaints (244) that were actually filed with the Consumer Services Division of the Public Staff against ALLTEL Carolina, Inc. during 2000 and 2001 combined.

The Public Staff commented that although hundreds of customers may find it annoying to wait on the line for three or four minutes to reach a business office or repair service representative, few of those customers, if any, are likely to spend an additional five or ten minutes to call or write the Public Staff and complain. However, the Public Staff noted, each such instance of answertime delay would constitute a separate violation of Rule R9-8.

The Public Staff concluded that while it seems reasonable to assume that extremely poor service on objectives such as new service installations would tend to generate significant numbers of complaints, it is unclear that there is any direct relationship between customer complaints and service quality that would justify using complaint levels as an independent gauge of service performance. Therefore, the Public Staff recommended that the Commission reject the ITF's proposal to link mandatory reporting to customer complaint levels.

DISCUSSION

The Commission agrees with the Public Staff that it is appropriate to deny the ITF's proposal to limit reporting of service quality results based on a threshold level of complaints. The Commission notes that the ITF emphasized that, regardless of whether a company is required to report Rule R9-8 objectives, it will nevertheless remain subject to those objectives. In the Commission's opinion, this statement by the ITF supports denial of its proposal; if companies are subject to the objectives in Rule R9-8, they must produce reports which provide the data necessary to determine if in any given month they are in or out of compliance with each objective outlined in Rule R9-8. Therefore, simply reporting the information to the Commission should require very little additional work than would otherwise be required for the company to determine its compliance with the Rule.

Further, the Commission agrees with the Public Staff that while it seems reasonable to assume that extremely poor service on objectives such as new service installation would tend to generate significant numbers of complaints, it is unclear that there is any direct relationship between customer complaints and service quality that would justify using complaint levels as an independent gauge of service performance.

The Commission also believes that not all North Carolina consumers are aware of the Consumer Services Division of the Public Staff. Further, as noted by the Public Staff, the Commission believes that some customers will not take the additional time necessary to contact the Consumer Services Division with a complaint.

Therefore, the Commission finds it appropriate to reject the ITF's proposal to limit reporting of Rule R9-8 objectives based on a threshold level of complaints to the Consumer Services Division of the Public Staff.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to deny the ITF's proposal to limit reporting of service quality results based on a certain threshold level of customer complaints to the Consumer Services Division of the Public Staff.

► **ISSUE NO. 7: Should companies report data for certain measures at the exchange and/or wire center level?**

PUBLIC STAFF: In its April 5, 2002 filing, the Public Staff stated that it believes that the current monthly reporting requirements should be retained to ensure the continued provision of adequate service. In addition, the Public Staff proposed that the Commission require all companies to provide exchange-level reports on the last six service objectives of Rule R9-8: Initial Customer Trouble Reports (excludes subsequent reports), Repeat Reports, Out-of-Service Troubles Cleared Within 24 Hours, Regular Service Orders Completed Within 5 Working Days, New Service Installation Appointments Not Met for Company Reasons, and New Service Held Orders Not Completed Within 30 Days. The Public Staff noted that 10 of the 16 ILECs already report each of these objectives on an exchange level basis. The Public Staff stated that seven of the 10 serve only one exchange.

In Attachment A to its July 3, 2002 filing, the Public Staff proposed that the monthly reporting requirements be expanded to require reporting at the exchange and/or wire center level for certain objectives. The Public Staff argued that these changes would enable the Public Staff and the Commission to assess whether customers in all exchanges and wire centers are consistently being afforded adequate service quality. The Public Staff argued that if there are certain exchanges and wire centers where customers receive inferior service quality on a regular basis, this breakdown should enable the Commission to detect this problem more easily and to take appropriate remedial action.

The Public Staff stated in its October 10, 2002 reply comments that with respect to the ITF's criticisms of reporting at the exchange and/or wire center level, the Public Staff believes that local telephone companies have historically monitored service quality, to the extent possible, on an exchange or wire center level, in order to detect and pinpoint problem areas. The Public Staff maintained that exchange or wire center level reporting will prompt companies to allocate more resources to areas that are repeatedly failing the Rule R9-8 objectives. The Public Staff noted that North Carolina G.S. 62-140(a) prohibits telephone companies from maintaining unreasonable differences among localities as to services. The Public Staff argued that companies should make every reasonable effort to ensure a uniform level of service quality throughout their service areas.

The Public Staff noted that with respect to Trouble Reports Per 100 Access Lines, the ILECs' monthly performance results reveal that a number of exchanges sometimes exceed the Commission's objective of 4.75 reports per 100 access lines, sometimes by a factor of two or more. The Public Staff maintained that in some instances, there is a seasonal pattern of performance failures that repeats year after year. Meanwhile, the Public Staff asserted, other exchanges served by the same company consistently perform in compliance with the Commission's Trouble Reports Per 100 Access Lines service quality objective. The Public Staff argued that such differences in quality of service should be reported and addressed.

The Public Staff stated that it believes that similar patterns may be revealed if companies are required to report exchange and wire center level statistics for Repeat Reports, Out-of-Service Troubles Cleared within 24 Hours, Regular Service Orders Completed within 5 Working Days, Customer Appointments Not Met for Company Reasons, and New Service Held Orders not Completed within 30 Days. The Public Staff stated that it stands by its request that the Commission require such reporting. However, the Public Staff maintained that if the companies can show that service quality differences do not exist among exchanges and wire centers for these other service quality objectives, the Public Staff is willing to reconsider this recommendation. The Public Staff noted that its recommendation concerns reporting only and is not intended to imply that penalties should be imposed for failure to meet objectives at the exchange and/or wire center level rather than in the aggregate. The Public Staff noted that the Commission should not hesitate to address chronic service deficiencies on a case-by-case basis and take appropriate remedial action, even when they occur on an exchange or wire center level.

GCG/ITF: The ITF stated in its May 31, 2002 filing that instead of decreasing reporting requirements in consideration of good service, the Public Staff recommended increasing them by requiring exchange-level reporting on Rule 9-8's last six service objectives. The ITF maintained that the Public Staff gives no rationale for this recommendation, which does not respond to any identified problem and will not produce any consumer benefits. The ITF argued that raising carriers' costs by forcing changes in data gathering and more extensive reporting for no good reason is plainly not in the public interest. The ITF noted that if the Commission believes a carrier is experiencing particular problems in a specific exchange, then it can require exchange-level reporting on an exception basis.

The ITF noted in its August 21, 2002 reply brief that the Public Staff recommended expanding monthly reports to require reporting at the exchange and/or wire center level for Rule R9-8 objectives 12 through 17. The ITF stated that the Public Staff further recommended that the Commission require companies to file statistics on initial customer trouble reports per 100 total access lines, down to the wire center level (for exchanges with more than one wire center), as well as on a total operations basis. The ITF maintained that the Public Staff's proposal would require for any wire center exceeding 4.75 trouble reports per 100 access lines, the company would have to explain in writing its failure to meet this new objective.

The ITF argued that these are not just reporting changes, but substantive changes in standards, as the Public Staff indicated that a company might "fail" to satisfy an objective not just for the state as a whole, but for "any geographical or functional subdivision for which reporting is required."

The ITF stated that this expansion of reporting requirements would impose substantial new burdens on carriers, which will have to overhaul their tracking and reporting systems. In addition, the ITF argued that exchange-level reporting would require companies to change their resource allocation procedures, in order to avoid "failing" a monthly service objective in a small exchange where just one or two misses would have a disproportionate effect on service results.

The ITF noted that the Public Staff argued that exchange-level reporting will allow the Commission to detect whether customers in certain exchanges "receive inferior service quality on a regular basis." Again, the ITF asserted that the Public Staff provides no evidence that problems exist and that remedies are needed to meet these speculative problems. The ITF asserted that there is no reason to believe that ongoing service problems in particular geographical areas go undetected today.

DISCUSSION

The Commission agrees with the Public Staff that reporting of certain service objectives at the exchange and/or wire center level would be appropriate. The Commission notes that the ITF stated that, if the Commission believes a carrier is experiencing particular problems in a specific exchange, it can require exchange-level reporting on an exception basis. However, the Commission believes that without information at the exchange and/or wire center level, the Commission will not be in the position to know whether a carrier is experiencing particular problems in specific exchanges. The Commission does believe that it would be appropriate to limit this reporting by exchange and/or wire center level for a period of one-year which would give the Commission and the Public Staff the necessary information to determine if it would be appropriate to include this level of reporting permanently in Rule R9-8. Therefore, the Commission finds it appropriate to require companies to report the following Rule R9-8 service objectives at the exchange and/or wire center level for a period of one-year and to review the information after one year to determine if it would be appropriate to include this level of reporting permanently in Rule R9-8:

(1) Initial Customer Trouble Reports;
(2) Repeat Reports;
(3) Out-of-Service Troubles Cleared Within 24 Hours;
(4) Regular Service Orders Completed Within 5 Working Days;
(5) Customer Appointments Not Met for Company Reasons; and
(6) New Service Held Orders Not Completed Within 30 Days.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to require companies to report based on the exchange and/or wire center level for the six objectives outlined above for a period of one year and examine the data at the end of the year to determine if it would be appropriate to include this level of reporting permanently in Rule R9-8.

▶ ISSUE NO. 8: Should companies file an electronic copy as well as a hard copy of the service objective results?

▶ ISSUE NO. 9: Should companies be required to retain records to support their service objective results for one year?

GCG/ITF: The ITF did not address these issues.

PUBLIC STAFF: The Public Staff recommended in its July 3, 2002 filing that the Commission require companies to file their monthly reports electronically, as well as in hard-copy, printed form. The Public Staff also proposed that the Commission amend Rule R9-8 to require that companies retain the data and other inputs they use to generate a particular monthly service quality report for one year from the date the report is filed with the Commission.

DISCUSSION

The Commission notes that both of these issues were proposed by the Public Staff and that the ITF did not address the issues in any of its filings.

The Commission believes that it would be beneficial to have companies file an electronic copy on diskette of their monthly service quality reports. Therefore, the Commission finds it appropriate to require companies to file, in addition to the required number of hard copies, electronic copies of their monthly service quality reports. The Commission finds it appropriate to instruct companies to file a diskette containing an electronic copy of their monthly report and clearly label each diskette with the name of the company, the docket number, and the report date. The Commission also reminds companies to reflect the company name as certified by the

Commission on all reports instead of the company's doing business as name. The Commission instructs the Chief Clerk not to retain the diskettes in the official file but to forward the diskettes to the Communication Division of the Public Staff.

Further, the Commission believes that it is reasonable and appropriate to require companies to retain the data used to calculate their service objective results for a period of one year from the date the report is filed with the Commission.

Therefore, the Commission finds it appropriate to (1) grant the Public Staff's proposal to require companies to file an electronic copy of their monthly service quality results; and (2) grant the Public Staff's proposal to require companies to maintain the supporting data used to generate their reports for a period of one year from the date a report is filed with the Commission.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to grant the Public Staff's proposal to require companies to file an electronic copy of their monthly service quality results. Further, the Commission finds it appropriate to grant the Public Staff's proposal to require companies to maintain the supporting data used to generate their reports for a period of one year from the date a report is filed with the Commission. For example, data used for the November 2002 report would need to be retained until November 30, 2003.

▶ **ISSUE NO. 10: Are the Public Staff's Directory Assistance (DA) recommendations reasonable and appropriate?**

PUBLIC STAFF: The Public Staff noted in its April 5, 2002 Report that the Commission, in its March 22, 2001 Order, directed the Public Staff to consider objectives that would address the level of accuracy received by callers to DA and provide specific recommendations and comments on this issue. The Public Staff maintained that the Commission explained that it continuously hears of situations where consumers are given incorrect information from DA and has previously expressed its first-hand experience with inaccuracies in DA.

The Public Staff stated that in researching DA accuracy for its Report, it examined several sources, including the DA information submitted by local and long distance carriers in this docket, service standards adopted in other states, and consumer complaints received by the Public Staff's Consumer Services Division.

The Public Staff noted that in its June 12, 2001 filing, in order to gain a better understanding of how DA is provisioned, it requested that the Commission require all local and long distance carriers actually serving customers to respond to a DA questionnaire. The Public Staff commented that the survey consisted of 18 questions with topics including DA charges, refunds for incorrect listings, and DA accuracy. The Public Staff noted that 62 companies replied to the questionnaire between July 3, 2001 and August 14, 2001.

The Public Staff maintained that 11 of the 62 respondents (or 18%) indicated that they provide their own DA services. The Public Staff stated that for the remaining local carriers that do not provide their own DA service, 14 utilize BellSouth DA services, five use the DA services of Sprint or the underlying local provider, and four use a non-ILEC DA provider. The Public

Staff noted that seven replied that their customers do not have access to DA services because they offer only prepaid service or data service. The Public Staff stated that 21 of the companies are strictly long distance carriers, which typically utilize the underlying carrier's DA services.

The Public Staff opined that the survey results suggest that many of the DA services offered to customers are comparable in delivery and content. The Public Staff stated that nearly 40% of the local service providers that responded to the questionnaire, along with two long distance providers, utilize BellSouth's DA services, which are representative of the DA services of the other respondents that provide their own DA services. The Public Staff noted that North State Telephone Company, South Carolina Net, Inc., and Verizon provide their own DA services. The Public Staff commented that the remaining responses from companies that provide their own DA were filed as proprietary information.

The Public Staff noted that BellSouth's DA allows its customers to obtain listings on a nationwide basis. The Public Staff maintained that BellSouth provides this coverage by accessing DA information from two sources: (1) its own directory database comprised of BellSouth customers and customer listings for independent companies that list their customers with BellSouth; and (2) a national directory database from a third-party vendor. The Public Staff stated that BellSouth makes revisions to its directory database within three days of a service order, and enters updates into the database six nights a week.

The Public Staff commented that BellSouth and several other respondents indicated that they track their DA accuracy by conducting surveys. The Public Staff noted that BellSouth conducts audits of its database at least once a year. The Public Staff stated that BellSouth contracts with an outside auditor who uses a statistically valid random sampling of DA calls to estimate the DA accuracy. Through this audit process, the Public Staff asserted, BellSouth has determined that its DA listings are 95.6% accurate. The Public Staff commented that five other respondents also utilize audits to evaluate the adequacy of their DA services.

ITF/GCG: The ITF noted in its May 31, 2002 comments that the Public Staff makes a number of specific DA recommendations. The ITF asserted that as a general matter, there is no reason for any of these proposals. The ITF maintained that from 1999 through 2001, there were only a handful of DA complaints for the entire industry each year, and even these are declining – from nine in 1999 to just five in 2001. Moreover, the ITF asserted that it is not even clear whether all of these complaints were justified or linked to any Commission regulation (for example, one customer sought an exemption from DA charges because of "sickness"). The ITF maintained that the Public Staff itself observed that "[j]udging from the customers' complaints, the Public Staff believes that instances of DA inaccuracy are infrequent." Despite this objective evidence, the ITF noted that the Public Staff nevertheless speculates that there must be a larger, unreported problem that needs to be addressed with rules that will constrain companies' operations and raise their costs. The ITF stated that in proposing its rules, the Public Staff neglected to perform any cost/benefit analysis, disregarded the anticompetitive consequences of its proposals, and ignored the legal requirement of reasoned decisionmaking.

The ITF stated that stricter regulation of DA operations is particularly inappropriate and counterproductive. The ITF argued that no technical or legal constraints impede entry into the

DA market, and competition is continually expanding from a number of sources, including interexchange carriers, local carriers, alternative directory assistance providers (such as INFONXX), wireless providers, online white and yellow page providers, and CD-ROM telephone directories. The ITF maintained that imposing additional requirements on just the Commission-regulated DA providers, as the Public Staff advocated, will artificially handicap these providers, to the detriment of efficient competition.

The ITF argued that the Commission should reject the Public Staff's unsupported DA recommendations. The ITF maintained that there is no reason to impose costly and inflexible regulations to address an entirely speculative problem. The ITF stated that doing so could only undermine the competitive nature of the DA market.

The ITF argued that the Commission should reject the Public Staff's proposals in its Report. The ITF, instead, urged the Commission to adopt the recommendations set forth in the ITF's Policy Statement and the Service Quality Report prepared by the GCG.

DISCUSSION

The Public Staff made three specific DA recommendations in its April 5, 2002 Report, as follows:

- ▶ Carriers should be required to provide refunds to customers for an incorrect listing or no listing;
- ▶ Carriers should be required to update customer listings in their DA databases within 48 hours of a service order causing a new or changed listing; and
- ▶ Carriers which provide their own DA service should be required to complete an audit of their DA and provide a report to the Commission.

The Commission will discuss separately each of the Public Staff's DA recommendations below:

▶ Issue No. 10(a) – Should carriers be required to provide refunds to customers for an incorrect listing or no listing?

PUBLIC STAFF: The Public Staff noted in its April 5, 2002 Report that one of the survey questions required the companies to describe their refund policies when a caller receives an incorrect listing or no listing. The Public Staff asserted that most of the respondents explained that it is a company policy to refund credits upon request, although the methods varied from company to company. The Public Staff noted that 13 of the companies indicated that DA callers would not be entitled to a refund if a DA call resulted in no listing found, while others stated that the caller would be issued a refund for any calls that yield an incorrect listing or no listing.

The Public Staff noted that the respondents also had different procedures for customers to follow in order to receive a refund. For instance, the Public Staff stated, BellSouth responded that a caller should request refunds by dialing "411" and explaining the trouble to the DA operator. The Public Staff maintained that Verizon routes refund requests through its business office, where each claim is investigated and a credit issued if appropriate. Similarly, the Public Staff noted that Randolph Telephone Company instructs its customers to call the local business office after improper DA charges appear on their bill.

The Public Staff stated that it is concerned about a customer's ability to receive a refund after receiving inadequate DA service. The Public Staff argued that it is appropriate for the Commission to establish a uniform refund policy and to require all companies to advise their customers of the policy in writing. Specifically, the Public Staff recommended that companies be required to issue refunds for DA calls upon request any time a correct listing is not obtained, i.e., either for an incorrect listing or no listing, as a result of inaccuracies in a carrier's DA records. The Public Staff argued that this should apply to any carrier, including ILECs such as BellSouth and Verizon, that already have tariff language directly addressing DA. The Public Staff stated that although this ILEC tariff language commonly states that a charge shall apply for each DA inquiry, this should not allow a carrier to charge for an incorrect listing, or for inquiries where no number is provided but the correct number should have been available from the carrier's records. The Public Staff asserted that the credit should be granted unless the carrier can demonstrate that the listing provided was correct or that the inability to provide the listing was not the fault of the company.

The Public Staff further recommended that companies be required to publish the following notice as a yearly bill insert and in each forthcoming local telephone directory in a prominent manner:

> You are entitled to a refund from your service provider of directory assistance charges associated with any inquiry that does not yield a correct listing due to [Company's name] error. Contact [Company's name]'s business office to request a refund.

The Public Staff maintained that it should be clearly identified on the customer's bill as a refund for the DA charge. The Public Staff proposed that for clarity, if the refund appears on the same bill as the erroneous charge, both the charge and the refund should be shown.

GCG/ITF: The ITF stated in its May 31, 2002 comments that without citing any evidence of a problem, the Public Staff stated that it is "concerned about a customer's ability to receive a refund after inadequate DA service" and thus proposed a uniform refund policy, along with specific language notifying the customer of this policy through an annual bill insert and in all telephone directories. The ITF maintained that under the new rule, all DA providers would be required to give bill credits to any customer claiming he received an incorrect listing or no listing, "unless the carrier can demonstrate that the listing provided was correct or that the inability to provide a listing was not the fault of the company." The ITF noted that the refund is to be provided as a separate line item "clearly identified" as a DA refund, and customers must be advised of the refund policy through prescribed language in an annual bill insert and a "prominent notice" in the print directories.

The ITF asserted that this proposal is an invitation to fraud. The ITF stated that while the ITF believes that many customer requests for DA refunds are legitimate, a certain segment of customers will always exploit opportunities for unjustified gains. The ITF maintained that in this case, all a customer need do is claim that he did not receive the correct listing or that he did not receive any listing at all. The ITF maintained that the burden is then on the company to prove that it did not make a mistake. The ITF noted that the result, in practical terms, will be payment on all customer claims, whether or not they are justified.

The ITF stated that its members agree that giving credit for a wrong number received is reasonable and appropriate, and carriers typically already have their own policies to give credits upon request. But, the ITF noted that DA results are only as good as the information the customer gives the operator. For example, if a customer provides incomplete or inaccurate information, he will not get the correct listing or any listing at all. It will be impossible for the company to prove what a customer said on a given call. Indeed, the ITF argued that it will not be cost-effective for the Company to do any investigation of customer claims, as the investigation would likely cost more in employee time and resources than the credit itself.

The ITF asserted that the Public Staff's proposal to give all customers prominent notice of the liberal refund policy in annual bill inserts and telephone directories will only increase the likelihood of fraudulent refund claims. The ITF stated that to the extent these occur, the costs of unwarranted credits (including the uncompensated costs of doing the look-up) will be passed on to the general body of consumers, even when the company is not at fault.

The ITF stated that customers will bear other costs, as well. The ITF asserted that the Public Staff's overly prescriptive approach requires specific language in inserts and directories, as well as a particular bill format. The ITF argued that these measures will cause significant increased costs, particularly for companies that have standardized billing and directory formats nationwide. The ITF stated that even though there is no evidence that customers consider companies' existing refund and notice practices to be inadequate, companies would be forced to change them to meet the Public Staff's requirements, if they are adopted. The ITF concluded that there is no reason to require companies – and, in turn, their customers – to bear the costs of operational changes.

DISCUSSION

The Commission notes that the ITF has asserted that the Public Staff's DA refund proposal is an invitation to fraud. The ITF conceded that while many customer requests for DA refunds are legitimate, a certain segment of customers will always exploit opportunities for unjustified gains. The Commission recognizes that some customers may exploit a DA refund policy, but the Commission believes that this would be the exception and not the rule. The Commission believes that DA is a service and that customers should always be granted a refund when the service does not result in a correct listing or a listing that should have been provided but was not. The Commission does not believe that the vast majority of customers would request a refund when the service they requested (a DA listing) was correctly provided. There simply is little to be gained by receiving a refund for a correct DA listing, and in order to get the refund, a certain amount of effort has to be put forth by the customer. The Commission does not believe that companies should be allowed to retain DA revenues gained when the DA service was not adequately provided. Therefore, the Commission finds it appropriate to adopt the Public Staff's proposal of requiring carriers to provide DA refunds for an incorrect listing or no listing. The Commission notes that within this proposal is a requirement for carriers to: (1) provide an annual bill insert to customers informing them of the uniform DA refund policy; and (2) publish the uniform DA refund policy prominently in each future local telephone directory.

10(a) - COMMISSION CONCLUSIONS – The Commission finds it appropriate to adopt the Public Staff's proposed uniform DA refund policy wherein customers will be granted refunds for all DA calls that result in an incorrect listing or no listing when one should have been provided.

▶ Issue No. 10(b) – Should carriers be required to update customer listings in their DA databases within 48 hours of a service order causing a new or changed listing?

PUBLIC STAFF: As part of its service quality evaluation, the Public Staff noted in its April 5, 2002 Report that it reviewed service quality rules for other states and identified 12 states with established standards relating to directory assistance. The Public Staff stated that of those, seven states (or 14% of all states) limit the amount of time allowed to make updates or additions to DA listings. For example, the Public Staff maintained, Florida has a requirement that new or changed listings must be provided to directory assistance within 48 hours. The Public Staff noted that three states have a general requirement that the DA operators must have records of all phone customers in the area for which they are responsible. The Public Staff asserted that one state has a requirement that DA operators must be provided with corrected information once an error is found in the directory listing. The Public Staff included as Attachment 4 to its filing a listing of state DA rules.

The Public Staff commented that between January 1, 1999 and December 31, 2001, the Consumer Services Division of the Public Staff received 21 separate complaints directly related to directory assistance. The Public Staff noted that 16 of those were complaints about incorrect listings being provided or no listing being found in cases where they should have been available. In addition, the Public Staff stated, four customers complained of DA charges, and one maintained that BellSouth's DA operators are incompetent. The Public Staff noted that at least one complainant indicated that the DA provider refused to issue a refund for a DA call that resulted in an incorrect number. The Public Staff provided a list of the DA complaints as Attachment 5 to its filing.

The Public Staff noted that its Consumer Services Division received several complaints that DA calls had resulted in no listing being found, even though the caller's request was for an existing business listing. In one example, the Public Staff stated, a caller was told his own number did not exist by a DA provider that claimed to cover the area where the caller resided. The Public Staff maintained that if a carrier claims that it offers DA services for an area in which the caller is seeking a listing, the caller should be able to assume that the carrier will have all the current listings for that area.

The Public Staff commented that there has been a decrease in DA complaints in recent years, which may indicate that DA accuracy is improving. The Public Staff noted that its Consumer Services Division received nine complaints in 1999, seven in 2000, and five in 2001.

The Public Staff stated that judging from customer complaints, the instances of DA inaccuracy are infrequent. However, the Public Staff asserted that this measure should not be used as the sole indicator of the existence of a problem. The Public Staff argued that it is unlikely that many customers would bother to file a report with the Commission after receiving an incorrect DA listing. The Public Staff stated that it believes that the Commission should require DA providers to provide more information on the level of accuracy of their DA services before a final determination is made.

The Public Staff maintained that it is appropriate for the Commission to require the carriers to adopt practices to help ensure that DA information is kept updated and current. The Public Staff believes that the Commission should order the carriers to update their customer listings in the directory database within 48 hours of a service order resulting in a new or changed listing.

The Public Staff noted that there are several other DA and directory issues that are potential concerns. The Public Staff commented that the FCC had initiated proceedings against AT&T and MCI for failing to provide their customers with a reasonable opportunity to make two requests for DA listings on one chargeable inquiry, as is allowed by their tariffs. The Public Staff stated that on information and belief, this is a common problem among many companies that rely on automated systems. The Public Staff argued that there is no uniform dialing pattern for local DA that is observed by carriers throughout the state. The Public Staff maintained that there are concerns over callers being charged incorrect amounts for DA calls by carriers that charge different rates based on the location of the requested telephone number in relation to the caller.

GCG/ITF: The ITF noted in its May 31, 2002 comments that the Public Staff advised that it is "appropriate for the Commission to require the carriers to adopt practices to help ensure that DA information is kept updated and current" and thus recommended that the Commission order carriers to update customer listings in their DA databases within 48 hours of a service order causing a new or changed listing. Again, the ITF asserted that there is no evidence of any industry-wide (or even carrier-specific) problem with outdated DA databases. The ITF maintained that like the other DA requirements, these will impose significant, unnecessary costs on carriers.

The ITF stated that although many carriers already make most updates within 48 hours of a change, a 48-hour update mandate is unreasonable because it does not account for non-business days. The ITF argued that adding personnel to ensure compliance with the 48-hour standard on weekends and holidays will increase providers' costs.

In addition, the ITF stated that in order to remain competitive, many carriers have implemented directories with nationwide coverage. The ITF noted that information for these databases typically comes from a variety of sources. For example, the ITF commented, as the

Public Staff explained, BellSouth's DA information contains BellSouth's own customer information, listings for local competitors' customers, and a national directory database from a third-party vendor. Thus, the ITF maintained, BellSouth (and many other carriers) do not have complete control over directory updates, as many listings come from other local carriers and vendors. The ITF argued that it would be unfair to penalize the DA provider for "late" updates that were not its fault. Moreover, the ITF stated that additional, unnecessary regulatory requirements could chill the very competition that has produced tangible consumer benefits like the convenient and popular national directory services.

The ITF recommended that the Commission reject the Public Staff's proposed 48-hour update requirement as unnecessary and unreasonable.

DISCUSSION

The Commission agrees with the Public Staff that it is appropriate for the Commission to require the carriers to adopt practices to help ensure that DA information is kept updated and current. The Commission further notes that the ITF has stated that although many carriers already make most updates within 48 hours of a change, a 48-hour update mandate as proposed by the Public Staff is unreasonable because it does not account for non-business days. The Commission notes that Florida has adopted the following rule concerning DA listing updates:

> Rule 25 - 4.040(5) . . . All new or changed listings shall be provided to directory assistance operators within 48 hours after connection of service, excluding Saturdays, Sundays, and holidays.

The Commission also notes that the Public Staff commented that 14% of states limit the amount of time allowed for carriers to make updates or additions to DA listings.

Based upon the foregoing, the Commission believes that it is reasonable and appropriate to adopt a rule wherein carriers are required to update the DA listings they maintain and/or control within 48 hours of a change, excluding Saturdays, Sundays, and holidays. Therefore, the Commission finds it appropriate to adopt the following rule:

> Carriers must update their DA customer listings in any directory database the company maintains and/or controls within 48 hours of a service order resulting in a new or changed listing, excluding Saturdays, Sundays, and holidays.

10(b) – COMMISSION CONCLUSIONS: The Commission finds it appropriate to adopt the above-proposed rule concerning updating of DA listings for inclusion in Rule R9-8.

► Issue No. 10(c) – **Should carriers that provide their own DA service be required to complete an audit of the accuracy of their DA and provide a report to the Commission?**

PUBLIC STAFF: The Public Staff recommended in its April 5, 2002 Report that the Commission require those companies that indicated that they provide their own DA services to conduct an audit similar to the one conducted by BellSouth and file the results with the

Commission. The Public Staff maintained that this will provide a realistic overview of the current accuracy level of the DA available from these providers. The Public Staff provided a copy of the procedures followed by the company that audited BellSouth's national DA services as Attachment 6 to its filing. The Public Staff noted that the censored portions of the document contain the actual proportions for each type of call traffic tested by the auditor. The Public Staff commented that BellSouth regards that as proprietary information, but the proportions tested should follow the proportions of each type of traffic handled by the provider.

GCG/ITF: The ITF noted in its May 31, 2002 comments that the Public Staff recommended that the Commission "require each company that provides its own DA services to conduct an audit of its DA accuracy" similar to the one conducted by BellSouth, and to file the results with the Commission within six months. The ITF stated that according to the Public Staff, BellSouth conducts audits of its database and the third-party national database at least once a year. The ITF commented that the audit is performed by an outside auditor, who uses call sampling to estimate DA accuracy.

The ITF stated that this measure, like the other DA recommendations, requires carriers to waste resources addressing a nonexistent problem. The ITF argued that independent audits are expensive, and no carrier has unlimited resources. The ITF noted that in the absence of a well-defined problem, competitors should remain free to choose to expend their limited resources in ways they believe will best serve consumers and enhance their competitive position. The ITF stated that given the robust competition in the DA market, companies need no external incentives to provide accurate, timely, and professional service. In fact, the ITF asserted and as the Public Staff pointed out, several companies already conduct regular DA surveys, and there is no evidence that these or other measures are insufficient to assure quality DA service. The ITF maintained that the Commission should reject the Public Staff's DA audit proposal.

DISCUSSION

The Commission notes that it has expressed its concerns over the accuracy of DA listings for several years. The ITF has argued that the Public Staff's DA recommendations would result in a waste of resources to address a nonexistent problem. However, the Commission believes that requiring an audit of DA by carriers which provide their own DA services would provide the critical information necessary to discern whether DA databases are accurate or not.

Further, the Commission notes that the Public Staff commented that 11 carriers of 62 total DA survey respondents provide their own DA service and that BellSouth currently conducts audits of its DA database. The Commission notes that the Public Staff's proposed DA audit is a one-time requirement and would only apply to 10 carriers since BellSouth already conducts DA audits. Therefore, the Commission believes that the information to be gained from the results of DA audits is necessary and would not be unduly burdensome to the 10 carriers affected.

The Commission finds it appropriate to adopt the Public Staff's proposal to require carriers that provide their own DA services to conduct an audit similar to the one conducted by BellSouth and to file a copy of the audit results with the Commission within six months.

10(c) – COMMISSION CONCLUSIONS: The Commission finds it appropriate to require carriers that provide their own DA services to conduct an audit similar to the one conducted by BellSouth and to file a copy of the audit results with the Commission within six months.

SECTION IV – AMENDED RULE R9-8

Overall, the Commission adopts the following Rule R9-8:

Rule R9-8. Service objectives for local exchange telephone companies.

(a) Service Objectives. Each regulated local exchange telephone company shall perform and provide service in accordance with the following uniform service objectives:

Measure No.	Description	Objective
1	Intraoffice Completion Rate	99% or more
2	Interoffice Completion Rate	98% or more
3	Direct Distance Dialing Completion Rate	95% or more
4	EAS Transmission Loss	95% or more between 2 and 10 dB
5	Intrastate Toll Transmission Loss	95% or more between 3 and 12 dB
6	EAS Trunk Noise	95% or more 30 dBrnc or less
7	Intrastate Toll Trunk Noise	95% or more 33 dBrnc or less
8	Operator "O" Answertime	90% or more of calls answered within 10 seconds

Measure No.	Description	Objective
9	Directory Assistance Answertime	85% or more of calls answered within 10 seconds
10	Business Office Answertime	90% or more within 20 seconds PLUS an absolute maximum answertime to be determined later
11	Repair Service Answertime	90% or more within 20 seconds PLUS an absolute maximum answertime to be determined later
12	Initial Customer Trouble Reports	4.75 or less per 100 total access lines
13	Repeat Reports	1.0 report or less per 100 total access lines
14	Out-of-Service Troubles Cleared within 24 Hours	95% or more
15	Regular Service Orders Completed within 5 Working Days	90% or more

16	New Service Installation Appointments Not Met for Company Reasons	5% or less
17	New Service Held Orders Not Completed within 30 days	0.1% or less of total access lines

(b) This rule shall not preclude flexibility in considering future circumstances that may justify changes in or exceptions to these service objectives.

(c) Force Majeure. A company may seek a waiver of part or all of Rule R9-8 due to force majeure. To request a waiver, a company should file adjusted data and unadjusted data along with its waiver request with the Commission which includes appropriate data to support its request. In order to secure Commission approval, the waiver request should clearly demonstrate that (1) the force majeure event was sufficiently serious and unusual to warrant adjustment of the reported monthly statistics, including a detailed description of the adverse consequences of the event on the ratepayers' service and the company's facilities; (2) to the extent possible, the company prudently planned and prepared in advance for such emergencies; (3) despite these plans and preparations, and the best efforts of the company personnel before, during, and after the event, failures to satisfy the service objectives were unavoidable; and (4) the extent and nature of the adjustments requested are appropriate for the circumstances. The Commission may grant waiver requests if the Commission finds that all four criteria have been met.

(d) Reporting Requirement. Each local exchange telephone company actually providing basic local residential and/or business exchange service to customers in North Carolina shall file an original and five (5) hard copies and one electronic copy on diskette of a report each month with the Chief Clerk of the Commission detailing the results of its compliance with Measures 8 – 17 as set forth in this Rule. Companies should reflect the company name as certified by the Commission. Additionally, the electronic copies on diskette should be clearly marked with the company name, the docket number, and the report month.

Each company shall report its performance results for the following six objectives on an exchange and/or wire center level:

- Initial Customer Trouble Reports (Measure 12);
- Repeat Reports (Measure 13);
- Out-of-Service Troubles Cleared Within 24 Hours (Measure 14);
- Regular Service Orders Completed Within 5 Working Days (Measure 15);
- New Service Installation Appointments Not Met for Company Reasons (Measure 16); and
- New Service Held Orders Not Completed Within 30 Days (Measure 17).

[COMMISSION NOTE: This requirement would only be in effect for a one-year period at which time the Commission would make a determination whether the requirement should continue.]

Each company shall file performance results for the following measures for the following categories of customers: (1) all North Carolina business customers; (2) all North Carolina residential customers; and (3) all North Carolina customers:

- ▶ Business Office Answertime (Measure 10);
- ▶ Repair Service Answertime (Measure 11);
- ▶ Out-of-Service Troubles Cleared Within 24 Hours (Measure 14);
- ▶ Regular Service Orders Completed Within 5 Working Days (Measure 15);
- ▶ New Service Installation Appointments Not Met for Company Reasons (Measure 16); and
- ▶ New Service Held Orders Not Completed Within 30 Days (Measure 17).

[**COMMISSION NOTE:** This requirement would only be in effect for a one-year period at which time the Commission would make a determination whether the requirement should continue.]

This report shall be filed no later than twenty (20) days after the last day of the month covered by the report and the person submitting the report shall verify its accuracy under oath. Such verification shall be in the following form:

VERIFICATION UNDER OATH
REGARDING ACCURACY OF SERVICE OBJECTIVES REPORT

I, ______________________________, state and attest that the attached Service Objectives Report is filed on behalf on ____________________ (Name of Public Utility) as required by North Carolina Utilities Commission Rule R9-8; that I have reviewed said Report and, in the exercise of due diligence, have made reasonable inquiry into the accuracy of the information provided therein; and that, to the best of my knowledge, information, and belief, all of the information contained therein is accurate and true, no material information or fact has been knowingly omitted or misstated therein, and all of the information contained in said Report has been prepared and presented in accordance with all applicable North Carolina General Statutes, Commission Rules, and Commission Orders.

____
Signature of Person Making Verification

____
Job Title

____
Date

Subscribed and sworn before me this the ______ day of ________________, 200_.

____
Notary Public

My Commission Expires: ____________

(e) Website Reporting. Each regulated local exchange telephone company shall post on its website on a quarterly basis, beginning on March 31, 2003, the following information:

(1) a pass/fail statement with respect to Measures 8 through 17 of Rule R9-8(a), as applicable to the company, and
(2) a listing of any penalties paid by a company for service quality violations, the amount of such penalties, and the service objective(s) involved.

The Public Staff shall also post on its website on a quarterly basis, beginning March 31, 2003, a pass/fail statement with respect to Measures 8 through 17 of Rule R9-8(a) together with a listing of any penalties for service quality violations, for all companies required to post such data.

(f) Data Retention. Each company is required to retain the data used to calculate each objective for a minimum of one year from the date a report is filed with the Commission.

(g) Uniform Measurement Procedures. Each company shall adhere to the following uniform measurement procedures when calculating its service objectives:

COMMISSION NOTE: Procedures for Operator "O" answertime (Measure 8), directory assistance answertime (Measure 9), business office answertime (Measure 10), and repair service answertime (Measure 11) will be included after final resolution following an evidentiary hearing on these measures.

Initial Customer Trouble Reports (Measure 12):

Trouble Reports – General Considerations

A trouble report is defined as "any report from a subscriber or end user of telephone service to the telephone company indicating improper functioning or defective conditions with respect to the operation of telephone facilities over which the telephone company has control." Such reports shall be date and time stamped immediately upon receipt and date and time stamped again immediately after they have been cleared by company personnel.

Reported troubles that involve different access lines shall be regarded as separate troubles, even if the access lines terminate at the same premises, and/or result from a common cause, such as damaged cable or defective common equipment at a central office.

Subsequent reports and duplicate reports of previously reported troubles that have not been cleared by the company shall not be included in either initial or repeat trouble report totals.

Measured quantity: The number of initial troubles reported by telephone company subscribers in proportion to the number of total company access lines.

Company measurement procedures: Companies should continuously track the initial trouble reports that are received by their trouble reporting center(s). The statistic reported to the Commission shall be computed by taking the count of initial troubles reported in a given area between 12:00 midnight at the beginning of the first day of the calendar month and 12:00 midnight at the end of the last day of the same month, dividing this figure by the total access lines in service in that same area at the end of the last day of the month, and multiplying the quotient by 100.

$$\frac{\%\text{ initial troubles per}}{100\text{ access lines}} = \frac{100 \times \text{initial troubles reported during month}}{\text{Total access lines in service at the end of month}}$$

Troubles associated with nonregulated equipment, products, or services, and subsequent reports of the same trouble that are made after the initial report has been received but before the company has cleared the trouble condition should be excluded from the numerator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for initial trouble reporting purposes.

In the event a company systematically excludes the initial troubles reported by a class or classes of customers (for example, large business customers) from the troubles counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its monthly service quality report any deviation between the access line count used for monthly reporting of initial troubles per 100 access lines and the total access line count which it furnishes each month in its access line report.

Monthly reporting requirement: All companies shall file statistics on initial customer trouble reports per 100 total access lines. Figures shall be reported to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange exceeds 4.75 per 100 access lines, a brief explanation should be provided for the failure to meet this objective.

Repeat Reports (Measure 13):

Measured quantity: The number of repeat troubles reported by telephone company subscribers in proportion to the number of company access lines.

Company measurement procedures: Companies should continuously track the repeat trouble reports that are reported to their trouble reporting center(s). A repeat trouble is a trouble reported on an access line for which another trouble or troubles has been reported within the preceding 30 days and subsequently cleared. The statistic reported to the Commission shall be computed by taking the count of repeat troubles reported in a given area between 12:00 midnight at the beginning of the first day of the calendar month and 12:00 midnight at the end of the last day of the same month, dividing this figure by the total access lines in service in that same area at the end of the last day of the month, and multiplying the quotient by 100.

$$\frac{\%\text{ of repeat troubles per}}{100\text{ access lines}} = \frac{100 \times \text{repeat troubles reported during month}}{\text{Total access lines in service at end of month}}$$

Repeat troubles associated with nonregulated equipment, products, or services shall be excluded from the count appearing in the numerator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for repeat trouble reporting purposes.

In the event that a company systematically excludes the repeat troubles reported by a class or classes of customers (for example, large business customers) from the troubles counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its monthly service quality report any deviation between the access line count used for monthly reporting of repeat troubles per 100 access lines and the total access line count which it furnishes each month in its access line report.

Monthly reporting requirement: All companies shall file statistics on repeat customer trouble reports per 100 access lines. Figures shall be reported to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange exceeds 1.0 per 100 access lines, a brief explanation should be provided for the failure to meet this objective.

Out-of-Service Troubles Cleared Within 24 Hours (Measure 14):

Measured quantity: The percentage of total out-of-service troubles that are cleared within 24 hours during the reporting month.

Company measurement procedures: Companies should continuously track the out-of-service troubles (troubles involving inability to make outgoing calls or receive incoming calls, or line impairments so severe that they render voice communication impossible) that are reported by company subscribers and end users. Each out-of-service trouble report should be date and time stamped immediately upon receipt and date and time stamped immediately after the trouble condition is cleared. The time taken to clear the trouble is the difference between these two times. To obtain the reported statistic, the company shall count the number of out-of-service troubles that were cleared during the calendar month and within 24 hours of their receipt and divide this figure by the total number of out-of-service trouble reports cleared during the calendar month to obtain the percentage cleared within 24 hours:

$$\begin{array}{l}\text{\% out-of-service troubles}\\ \text{cleared within 24 hours}\end{array} = \frac{100 \times \text{total out-of-service troubles cleared within 24 hours during month}}{\text{Total out-of-service troubles cleared during month}}$$

Troubles associated with nonregulated equipment, products, or services and troubles that do not involve out-of-service conditions shall be excluded from the troubles counted in the numerator and denominator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for out-of-service trouble reporting purposes. Troubles in which the customer specifically requested an appointment beyond 24 hours shall be excluded from the troubles counted in the numerator and denominator of this formula.

Monthly reporting requirement: All companies shall file statistics on out-of-service troubles cleared within 24 hours of receipt, reported to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange is below 95%, a brief explanation should be provided for the failure to meet this objective.

Regular Service Orders Completed Within 5 Working Days (Measure 15):

Measured quantity: The percentage of regular service orders that are completed during any calendar month within five working days of receipt by the company.

Company measurement procedures: Companies should continuously track the receipt and completion dates and times of all regular service orders (service orders placed by residential customers and by business customers with five or fewer access lines). Each regular service order should be date and time stamped immediately upon receipt by the company and date and time stamped immediately after the order has been completed. The reported statistic shall be calculated as follows:

$$\text{\% of regular service orders completed within 5 working days} = \frac{\text{100 x orders completed during month within 5 working days of receipt}}{\text{Total orders completed during month}}$$

For purposes of this calculation, "working days" shall be considered to be all days except Sundays, New Year's Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Orders for nonregulated equipment, products, or services shall be excluded from both the numerator and denominator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for regular service order reporting purposes. Orders wherein a customer specifically requests an appointment beyond 5 days and/or the delay was specifically and solely caused by the customer should be excluded from both the numerator and denominator of this formula.

Monthly reporting requirement: All companies shall report the percentage of regular service orders completed during the calendar month within five working days of receipt by the company. Figures shall be reported to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange is below 90.0%, a brief explanation should be provided for the failure to meet this objective.

New Service Installation Appointments Not Met for Company Reasons (Measure 16):

Measured quantity: The percentage of customer appointments that are scheduled to be completed during the calendar month but are missed due to company reasons.

Company measurement procedures: Companies shall maintain a record of the customer appointments that are scheduled to be completed during each calendar month. The company shall track the scheduled dates and times for these appointments and the actual completion dates and times and, for those appointments that are not kept, shall maintain a detailed record of the reason(s) for failure to keep them. The percentage of customer appointments missed during the calendar month due to company reasons shall be calculated as follows:

$$\text{\% of customer appointments not met for company reasons} = \frac{100 \times \text{customer appts not completed because of company reasons}}{\text{Customer appointments scheduled to be completed}}$$

Any customer appointment missed due to customer actions shall be excluded from the numerator of this formula. Appointments associated with installation or moving of, or changes or repairs to, nonregulated equipment, products, or services shall be excluded from the numerator and denominator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for customer appointments reporting purposes.

Companies, at a minimum, shall offer customers scheduling premises appointments the opportunity to select from a set of two or more four-hour appointment "windows" that will be made available for each day that appointments are being scheduled.

Monthly reporting requirement: Companies shall file the percentage of total customer appointments not met during the month for company reasons to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange exceeds 5.0%, a brief explanation should be provided for the failure to meet this objective.

New Service Held Orders Not Completed Within 30 Days (Measure 17):

Measured quantity: The number of new access line orders that, at any time during the calendar month, have been held for over 30 calendar days following receipt, in proportion to the total company access lines in service.

Company measurement procedures: Companies shall date and time stamp each new service order immediately upon receipt and shall identify and count all orders during the calendar month that have not been completed within 30 days from the date and time they were received. Each such order shall be counted as a new service held order not completed within 30 days. The total number of new service held orders not completed within 30 days shall be reported to the Commission as a percentage of total company access lines as of midnight at the end of the last day of the month:

$$\text{\% of new service held orders not completed within 30 days} = \frac{100 \times \text{orders not completed within 30 days at any time during month}}{\text{Total access lines in service at the end of month}}$$

Delays caused by the customer that prevent the company from completing an order within 30 days of receipt shall be excluded from the numerator of this formula. Further, orders with customer-requested appointments beyond 30 days shall be excluded from the numerator of this formula.

New service orders for nonregulated equipment, products, or services shall be excluded from the numerator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for new service held order reporting purposes.

In the event a company systematically excludes the new service held orders for a class or classes of customers (for example, large business customers) from the held orders counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its monthly service quality report any deviation between the access line count used for monthly reporting of held orders and the total access line count which it furnishes each month in its access line report.

Monthly reporting requirement: Companies shall report the percentage of new service held orders not completed within 30 days, to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area, each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange is above 0.1% of total access lines, a brief explanation should be provided for the failure to meet this objective.

(h) Directory Assistance. Carriers must update their DA customer listings in any directory database the company maintains and/or controls within 48 hours of a service order resulting in a new or changed listing, excluding Saturdays, Sundays, and holidays.

(i) Directory Assistance. Carriers are required to provide DA refunds for an incorrect listing or no listing. Carriers are further required to provide an annual bill insert to customers informing them of the uniform DA refund policy and to publish the uniform DA refund policy prominently in each local telephone directory.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R9-8 shall be amended as reflected in Section IV of this Order effective March 31, 2003.

2. That the ITF shall file (1) a proposal and related prefiled testimony for an absolute maximum answertime standard for Business Office and Repair Service; and (2) testimony on the appropriate uniform reporting procedures for Operator "O" Answertime, Directory Assistance Answertime, Business Office Answertime, and Repair Service Answertime by no later than Friday, January 10, 2003.

3. That the Public Staff shall file (1) a proposal and related prefiled testimony for an absolute maximum answertime standard for Business Office and Repair Service; and (2) testimony on the appropriate uniform reporting procedures for Operator "O" Answertime, Directory Assistance Answertime, Business Office Answertime, and Repair Service Answertime by no later than Friday, January 24, 2003.

4. That the Commission will hold an evidentiary hearing on Wednesday, January 29, 2003 to consider (1) the proposals and prefiled testimony for an absolute maximum answertime standard for Business Office and Repair Service; and (2) the appropriate uniform reporting procedures for Operator "O" Answertime, Directory Assistance Answertime, Business Office Answertime, and Repair Service Answertime.

5. That carriers that provide their own DA service shall complete an audit of the accuracy of their DA and file a copy of the audit results with the Commission by no later than June 30, 2003.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of December, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

bp122702.01

DOCKET NO. P-100, SUB 133d

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
General Proceeding to Determine) ORDER ADOPTING FINAL
Permanent Pricing for Unbundled) PERMANENT DEAVERAGED
Network Elements) UNE RATES

BY THE CHAIR: On March 15, 2001, the Commission issued its *Recommended Order Concerning Geographic Deaveraging of Unbundled Network Elements* (UNEs).

On March 30, 2001, Exceptions to the *Recommended Order* were filed.

On August 7, 2001, the Commission issued its *Order Addressing Exceptions Filed to Recommended Order Concerning Geographic Deaveraging*. In its Order, the Commission denied Motions for Reconsideration on and affirmed Findings of Fact Nos. 1, 6, 7, and 8. Further in its Order, the Commission requested that BellSouth Telecommunications, Inc. (BellSouth), Carolina Telephone and Telegraph Company and Central Telephone Company (collectively herein referred to as Sprint), and Verizon South, Inc. (Verizon) refile their deaveraging proposal based on the conclusions outlined in the Commission's Order by no later than September 6, 2001.

On September 6, 2001, BellSouth, Sprint, and Verizon refiled their cost studies. By Order dated September 13, 2001, the Commission requested that the Public Staff file comments on the refiled cost studies.

On October 4, 2001, the Public Staff filed its comments on the refiled cost studies. The Public Staff outlined several areas of contention. By Order dated October 9, 2001, the Commission requested BellSouth, Sprint, and Verizon to file a response to the Public Staff's October 4, 2001 Comments. On October 17, 2001, BellSouth, Sprint, and Verizon filed comments on the Public Staff's October 4, 2001 Comments.

On December 11, 2001, the Commission issued its *Order Finalizing Deaveraged UNE Rates and Denying ALLTEL's Motion to Deaverage Nonrecurring Rates.* In its Order, the Commission decided several issues in contention between the Public Staff and the ILECs. The Commission instructed BellSouth, Sprint, and Verizon to refile their cost studies in compliance with the December 11, 2001 Order on or before Thursday, January 10, 2002. The Commission further ordered BellSouth, Sprint, and Verizon to file all of their final permanent UNE rates in compliance with the Commission's Orders in both hard copy and an electronic form compatible with Excel 95/97. Finally, the Commission instructed the ILECs to include a summary sheet of the resulting rates and a listing of wire centers by both common English name and CLLI code in each zone.

On December 14, 2001, BellSouth refiled its deaveraged UNE rates. On January 10, 2002, Sprint and Verizon refiled their deaveraged UNE rates.

On January 23, 2002, Verizon filed a late filed Schedule 2.1 concerning deaveraged UNE rates.

On February 26, 2002, Sprint filed revised deaveraged UNE rates after consultation with the Public Staff.

On March 5, 2002, Verizon filed revised deaveraged UNE rates based on discussions with the Public Staff.

IT IS, THEREFORE, ORDERED as follows:

1. That the deaveraged UNE rates produced from the cost study filed on December 14, 2001 by BellSouth are hereby adopted as the final, permanent deaveraged UNE rates for BellSouth.

2. That the deaveraged UNE rates produced from the cost study filed on February 26, 2002 by Sprint are hereby adopted as the final, permanent deaveraged UNE rates for Sprint.

3. That the deaveraged UNE rates produced from the cost study filed on March 5, 2002 by Verizon are hereby adopted as the final, permanent deaveraged UNE rates for Verizon.

4. That the deaveraged UNE rates for BellSouth, Sprint, and Verizon shall have an effective date of December 11, 2001, the date of the Commission's *Order Finalizing Deaveraged UNE Rates and Denying ALLTEL's Motion to Deaverage Nonrecurring Rates.*

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of April, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

bp040402.01

DOCKET NO. P-100, SUB 133j

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Generic Proceeding on the Provisioning	)	ORDER ADDRESSING
of Collocation Space	)	UNRESOLVED COLLOCATION
	)	RATE ISSUES

BY THE COMMISSION: On December 28, 2001, the Commission issued its *Order Addressing Collocation Issues*. The *Order* required the Parties to file (1) a modified Standard Offering; (2) cost studies and resulting rates; (3) Supplemental Briefs on rate issues that were not negotiated; and (4) true-up proposals.

The Parties filed and were granted three separate Motions for Extension of Time to file the items required in the *Order Addressing Collocation Issues*. The third extension of time was granted by Order dated April 1, 2002 and required the Parties to:

1. File the modified Standard Offering by April 8, 2002;
2. File cost studies and resulting rates by April 8, 2002;
3. File any Briefs or comments discussing the Parties' respective language proposals for disputed provisions of the modified Standard Offering by April 15, 2002;
4. File Supplemental Briefs on rate issues that were not successfully negotiated by April 22, 2002; and
5. File true-up proposals by May 6, 2002.

On April 8, 2002, the Parties filed a joint negotiated modified Standard Offering. On April 15, 2002, BellSouth Telecommunications, Inc. (BellSouth), Carolina Telephone and Telegraph Company and Central Telephone Company (collectively referred to as Sprint), and Verizon South, Inc. (Verizon) filed a Joint Brief in Support of the ILECs' Modified Standard Offering. Also on April 15, 2002, WorldCom, Inc. (WorldCom), AT&T Communications of the Southern States, LLC (AT&T), and the Southeastern Competitive Carriers Association (SECCA) (jointly referred to as the CLPs) filed their Brief on the disputed language. On September 3, 2002, the Commission issued its *Order Addressing Disputed Language in the Standard Offering*.

The Commission's *Order Addressing Collocation Issues* required the Parties to attempt to negotiate the following rates:

(1) Cross-connects;
(2) Cable Installation;
(3) Augments;
(4) Adjacent Collocation; and
(5) Premises Space Report.

Supplemental Briefs on the rate issues that were not successfully negotiated were filed on April 22, 2002 by BellSouth, the CLPs, Sprint, and Verizon.

On April 1, 2002, BellSouth and Sprint filed their cost studies and resulting rates. On April 8, 2002, Verizon filed its cost study and resulting rates.

On May 2, 2002, the Public Staff filed a Motion for Extension of Time to file its reviews of the cost studies and rates filed by BellSouth, Sprint, and Verizon. By Order dated May 10, 2002, the Commission granted the Public Staff's Motion thereby requiring the Public Staff to file its comments on the cost studies and rates 30 days after BellSouth, Sprint, and Verizon refiled their final cost studies in compliance with both the *Order Addressing Motions for Reconsideration and Clarification* and the Commission's Order addressing the Supplemental Briefs on rates (which is the subject of this Order). The May 10th Order noted that the Commission will direct the Public Staff in this regard in its future order.

On May 6, 2002, BellSouth, Sprint, and Verizon filed their true-up proposals. On May 10, 2002, the CLPs filed comments in response to the ILECs' true-up proposals. On May 20, 2002, BellSouth filed reply comments; on May 22, 2002, Verizon filed reply comments; and on May 24, 2002, Sprint filed reply comments; all of the comments were filed in response to the May 10th comments of the CLPs.

On August 20, 2002, the Commission issued its *Order Addressing Motions for Reconsideration and Clarification* which finalized some of the collocation rate issues decided by the Commission in its December 28, 2001 *Order Addressing Collocation Issues.*

Following is: Section I – a discussion with conclusions, by rate issue, on the unresolved rate issues; and Section II – a discussion with conclusions on the ILECs' true-up proposals.

SECTION I – RATE ISSUES

RATE ISSUE NO. 1: Cross-Connects

SUPPLEMENTAL BRIEFS

BELLSOUTH: BellSouth proposed and the CLPs agreed to rates for the following cross-connect items:

Element Number	Element Name	Proposed MRC[1]
H.1.9	2-wire cross-connect	$0.0309
H.1.10	4-wire cross-connect	$0.0618
H.1.12	DS3 cross-connect	$17.62
H.1.31	2-Fiber cross-connect	$3.50
H.1.32	4-Fiber cross-connect	$6.20
H.1.48	Co-Carrier cross-connect – fiber cable support structure	$0.0028
H.1.49	Co-Carrier cross-connect – copper/coaxial cable support structure	$0.0041

BellSouth proposed rates for the following cross-connect items, however, the CLPs have not agreed to these proposed rates:

Element Number	Element Name	Proposed MRC	Proposed NRC[2]	Proposed NRC – First	Proposed NRC - Additional
H.1.9	2-wire cross-connect			$33.53	$31.65
H.1.10	4-wire cross-connect			$33.67	$31.70
H.1.11	DS1 cross-connect	$1.38		$52.87	$39.86
H.1.12	DS3 cross-connect			$51.97	$38.59
H.1.31	2-Fiber cross-connect			$51.97	$38.59
H.1.32	4-Fiber cross-connect			$64.53	$51.15
H.1.59	Subsequent Application for CCCX only		$583.66		

BellSouth stated that the CLPs rejected most of BellSouth's proposed rates without any explanation or counter-offer. BellSouth argued that its proposed rates should be approved by the Commission (1) because these rates are appropriate, (2) because they are, with very few exceptions, based upon the cost support on file with the Commission, and (3) because the CLPs have offered no substantive basis for their position. BellSouth also stated that to the extent CLPs raise for the first time in their Brief some ostensible basis for their refusal to accept the BellSouth-proposed rates, BellSouth should be granted leave to file a response.

[1] MRC – monthly recurring charge.

[2] NRC – nonrecurring charge.

CLPS (BELLSOUTH): The CLPs verified that they have agreed to BellSouth's proposed monthly recurring rates for Elements H.1.9, H.1.10. H.1.12, H.1.31, H.1.32, H.1.48, and H.1.49. The CLPs argued that the recurring rate for H.1.11 should be no greater than $0.629 (BellSouth is proposing $1.38). The CLPs maintained that this figure is derived by assuming that the monthly recurring rate for H.1.12 is correctly determined and would take into account that the capacity of a DS3 cable is equivalent to the capacity of 28 DS1 (hence the monthly recurring rate for H.1.12 divided by 28 equals $0.629). However, the CLPs contended, what BellSouth has determined for H.1.12 in its cost study for Georgia in that state's cost proceeding is several times smaller than its rate in North Carolina for H.1.12. The CLPs noted that in Georgia, BellSouth has proposed $5.01 and $4.10 depending on which methodology it has employed for H.1.12. The CLPs argued that this inconsistency in rates between states, which does not make sense, is not limited to H.1.12; it is characteristic of other BellSouth proposed rates for North Carolina.

SPRINT: Sprint maintained that due to the business failure of several CLPs, Sprint has changed its cross-connect price structure to incorporate nonrecurring charges (NRC) as well as monthly recurring charges (MRC). Sprint noted that since the hearing was held in this matter, at least 10 CLPs have ceased doing business in Sprint's North Carolina operating territories. Sprint argued that these business failures have resulted in the closing down of 74 collocation sites in Sprint's central offices. Sprint noted that four of the 10 CLPs that withdrew were among the original "New Entrants" that participated in this docket.

Sprint asserted that it has learned from experience that sole reliance on MRCs to recover costs of cross-connects exposes Sprint to significant losses. Sprint noted that such losses occur when CLP collocation sites do not remain in service throughout the assumed cost recovery period reflected in the MRC calculations.

Therefore, Sprint noted that its cross-connect rate structure now reflects NRCs for nonreusable materials and related engineering and installation labor. Sprint stated that nonreusable investment consists mainly of intraoffice cabling to and from CLP collocation sites. Sprint maintained that MRCs are still employed in Sprint's rate structure for reusable materials and related engineering and installation labor. Sprint also noted that reusable investment consists mainly of DSX panels, fiber panels, and cable racking.

Sprint noted that due to further experience in the marketplace, Sprint has changed the number of units of DS3s and Optical Fibers included in those product offerings. Sprint commented that in its newly proposed rates, Sprint now offers six DS3s as a bundle and 12 fibers as a bundle.

Sprint emphasized that unit investment amounts, labor rates, and worktimes have not changed since Sprint's original cost study filed on September 15, 2000. Sprint noted that in its proposed rates, cross-connect investments are now classified as reusable or nonreusable.

Sprint also noted that as a result of the requirement of the FCC's *Fourth Report and Order* released on August 8, 2001 that ILECs provide co-carrier cross-connects (CCXC), Sprint has also changed its cost structure to include three separate cross-connect rate elements. Sprint noted that there are now elements for cabling, for connecting the cabling at the MDF, DSX panel or fiber panel, and for jumpering. Sprint noted that in the case of CCXC, a CLP would only order the cabling element for direct cable runs between collocation spaces. Sprint stated that if the CLPs meet at the MDF, or a common DSX or fiber panel, they would also need to order the panel and jumper elements as well.

Sprint's proposed rates for cross-connects are as follows:

Cabling

Item	Carolina NRC	Carolina MRC	Central NRC	Central MRC
DS0 100-Pair Switchboard Cable	$638.53	$9.09	$656.12	$7.47
28 DS1 High-Frequency Cable	$592.47	$10.50	$601.96	$8.82
6 DS3 High-Frequency Cable	$1,973.02	$63.76	$1,982.55	$56.13
12 Fiber High-Frequency Cable	$1,243.47	$14.37	$1,290.35	$11.53

Cable Connections

Item	Carolina NRC	Carolina MRC	Central NRC	Central MRC
DS0 100-Pair MDF Cross-Connect Hardware	$373.64	$8.70	$385.43	$7.46
28 DS1 DSX Panel Connection	$280.91	$19.76	$294.20	$17.60
6 DS3 DSX Panel Connection	$286.12	$51.70	$300.51	$46.42
12 Fiber Patch Panel Connection	$387.21	$12.33	$404.92	$10.74

Jumpering

Item	Carolina NRC	Carolina MRC	Central NRC	Central MRC
DS0 100-Pair Jumper	$379.51	$3.94	$404.11	$3.19
28 DS1 Jumper	$212.52	$2.21	$226.30	$1.79
6 DS3 Jumper	$396.15	$4.12	$401.77	$3.17
12 Fiber Jumper	$285.69	$2.97	$288.05	$2.27

Sprint noted that also necessary to facilitate CCXC, Sprint has proposed a new element to recover the cost of common cable racking for instances where the CLPs have provided their own cable. Sprint stated that for this element, a MRC per linear foot is required by the Standard Offering. Sprint proposed a monthly recurring rate of $0.01 for Carolina and Central. Sprint maintained that calculations for this element use data taken from the cable racking component of Sprint's cross-connect cost studies as filed September 15, 2000.

Sprint also noted that lit fiber cross-connects are required in the Standard Offering. Sprint maintained that in order to comply, Sprint has included this element on its price list. Sprint stated that because it has never had an order for lit fiber cross-connects and because bandwidth requirements can vary widely, meaningful generic costing cannot be performed at this time. However, Sprint maintained that it is ready to accommodate CLP requests for this service on an individual case basis (ICB) when requests are received. Sprint argued that provisioning and billing on an ICB is an accepted practice in the telephone industry when there has not been adequate demand for a service to define a more generic process. Sprint maintained that ICB provisioning and billing is also an accepted practice in the industry when there are variables such as bandwidth which could cause wide variances in the resulting rates.

CLPS (SPRINT): See CLPs (Sprint) position on cable installation as outlined in their Supplemental Brief and noted on page 11.

VERIZON: Verizon explained in its Supplemental Brief that the cross-connect is the mechanism for connecting the CLP's network to the ILEC's or to another CLP's network. Verizon maintained that it has structured its rate elements to coincide with the manner in which it provides cross-connects. Verizon argued that its rate structure for cross-connects is sound in that Verizon only seeks to recover the time to pull and terminate cable, in addition to the material cost of the space where the cable lies and where the cable terminates. Verizon explained that within the pull and termination category, there are the following components: (1) engineering time to determine the requirements of the project with respect to the facility pull and termination; (2) the labor to actually perform the facility pull; and (3) costs associated with the labor required to terminate the cable. Verizon argued that the components describe the rate elements required for connections between the CLP and the MDF. Verizon asserted that CLP-to-MDF connections must precede CLP-to-CLP cross-connections. Verizon noted that when it provisions CLP-to-CLP cross-connections, Verizon ties together the CLPs' connections established on Verizon's frame or panel. Consequently, Verizon noted, it seeks only the cost of the cross-connect material, the time to place that material, and the costs incurred for the time to receive, process, and provision the CLP's order through the Access Service Request (ASR) system.

Verizon has proposed the following rates for CLP-to-CLP cross-connects which have **not** been agreed to by the CLPs:

Rate Element	Verizon Proposed NRC
Service Order – Semi-Mechanized-DS0	$21.89
Service Order – Manual DS0	$38.02
Service Order Connection – CO Wiring-DS0	$6.16
Service Connection – Provisioning DS0	$42.54
Rate Element	**Verizon Proposed NRC**
Service Order – Semi-Mechanized – DS1, DS3, Dark Fiber	$21.89
Service Order – Manual – DS1, DS3, Dark Fiber	$38.02
Service Connection – CO Wiring – DS1, DS3, Dark Fiber	$14.90
Service Connection – Provisioning – DS1, DS3, Dark Fiber	$57.43

Verizon has proposed the following rates for CLP-to-MDF cross-connects which have **not** been agreed to by the CLPs:

Rate Element	Verizon Proposed NRC	Verizon Proposed MRC
DS3 Coaxial Cable Termination – Preconnectorized	$1.11	
DS3 Coaxial Cable Termination – Unconnectorized	$11.09	
Fiber Optic Patch Cord Termination – Connectorized – Facility Termination	$1.11	
Facility Cable – DS0 Cable – Connectorized 100 pair	$323.16	
Facility Cable – DS3 Coaxial Cable – Connectorized	$300.02	
Facility Cable – DS3 Coaxial Cable	$81.41	
Facility Cable – Shielded Cable (Orange Jacket)	$31.12	
Facility Cable – Category 5 – Connectorized	$1.06	
Fiber Optic Patch Cord – Dual Fiber – Connectorized – Facility Cable	$57.35	
Facility Termination – DS0		$2.68
Facility Termination – DS1		$11.02
Facility Termination – DS3		$7.75
Facility Termination - Optical		$0.72
Cable Rack Space – Metallic		$0.41
Cable Rack Space – Fiber		$0.01
Fiber Optic Duct Space		$0.29

Verizon maintained that the CLPs agreed to the following rates proposed by Verizon:

Rate Element	Verizon Proposed NRC
Facility Pull/Termination – Engineering (Metallic & Fiber)	$78.19
Facility Pull – Labor (Metallic)	$224.22
Fiber Optic Patch Cord Pull (Facility Pull-Facility Labor)	$172.05
DS0 Cable Termination (Preconnectorized)	$4.44
DS1 Cable Termination (Preconnectorized)	$1.11

Verizon maintained that based on the D.C. Circuit's decision in *GTE v. FCC* (205 F.3d 416), Verizon may provide cross-connects for CLPs if it does not allow a CLP to provision its cross-connects. Verizon noted that it has chosen to provide these cross-connects and requires the circuit to follow a path that includes an ILEC termination point on a panel or frame. Verizon argued that this is consistent with the manner in which the FCC contemplated such provisioning, and the FCC has never found that the ILEC must bypass its own equipment when provisioning cross-connects. Verizon maintained that the FCC clearly contemplates ILEC use of an existing panel or frame to maximize efficiency of the cross-connect. Accordingly, Verizon stated, its panels or intermediate frames are used where they exist to reduce inefficiency in cross-connections. Verizon noted that it is clear that under the FCC's *Collocation Remand Order*, however, that the ILEC meets its obligation to provide an efficient cross-connect arrangement if it requires the circuit to traverse the ILEC's equipment as opposed to bypassing the ILEC's equipment all together.

Verizon asserted that its proposal is a sensible and efficient manner of provisioning cross-connects. Verizon argued that CLPs connecting to a Verizon panel or frame are able to interconnect with every other CLP connected to Verizon's network, giving them access to multiple CLPs and Verizon's network.

Verizon maintained that in the *Order Addressing Collocation Issues*, the Commission addressed the issue of appropriate rates for cross-connects in North Carolina and concluded that adequate evidence was not presented and ordered the Parties to attempt to negotiate rates for cross-connects. Verizon asserted that it provided the CLPs with its cross-connect rates for CLP-to-CLP connections and CLP connections to the MDF. Verizon noted that the CLPs have accepted some elements of Verizon's cross-connect rates for CLP connections to Verizon's MDF, although the CLPs failed to provide Verizon with a clear understanding of their objections to the rest of Verizon's proposed cross-connect rates. Verizon maintained that it suspects that the CLPs object to the manner in which Verizon offers CLP-to-CLP connections (i.e., Verizon requires the circuit to traverse ILEC equipment). However, Verizon argued, its provisioning is fully consistent with the FCC's *Collocation Remand Order* and the Commission's *Order Addressing Collocation Issues*.

Verizon noted that aside from the objection to Verizon's cross-connect rates for CLP-to-CLP connections, Verizon can only guess at what the CLPs' problems are with the rest of Verizon's cross-connect rates. Verizon stated that the CLPs have accepted the engineering component (the facility pull component) but only for the termination of a DS0 and DS1 cable. Verizon asserted that implicit in the CLPs' acceptance of these rate elements is a recognition of the legitimacy of the costs Verizon seeks to recover for these cable terminations. However, Verizon noted that the CLPs have rejected the DS3 coaxial cable termination and the fiber cable termination that are developed using the same methodology used for the DS0 and DS1 cable terminations. Verizon also maintained that the CLPs seek to prevent Verizon's full recovery of provisioning costs. Verizon concluded that although the CLPs accept Verizon's rate elements for pulling and terminating cable, they object to Verizon's recovery of material costs for the block to which the cable terminates and the racking necessary to run the cable from the CLP's collocation space to Verizon's network.

CLPS (VERIZON): The CLPs noted that with regard to CCXCs, Verizon's proposed rates are not premised on direct CLP-to-CLP connections. The CLPs maintained that Verizon refers to CCXCs as "dedicated transit service", in which the circuit between the CLPs will go through the Verizon DSX panel. The CLPs argued that this is inconsistent with the ILECs' proposed language for Section 5.5.1 of the Standard Offering, which requires CLP-to-CLP circuits. In addition, the CLPs noted, although the CLPs seek flexibility in the language of the Standard Offering to allow for other than direct connections, it is anticipated that in most cases CLPs will ask for a direct connection. The CLPs maintained that a direct connection is presumably more cost-efficient, and it certainly avoids the introduction of another point of failure.

DISCUSSION

First and foremost, the Commission is extremely disappointed in the ILECs and the CLPs in carrying out the negotiation requested in our December 28, 2001 *Order Addressing*

Collocation Issues. It appears from the comments filed that the Parties' attempt to negotiate these rate elements was a failure. The Commission's intent in the *Order* was for the Parties to "lock themselves in a room" and hash out, rate issue by rate issue, the different positions of the Parties. The Commission was anticipating receiving Supplemental Briefs which clearly outlined the areas of agreement and the specific areas of disagreement. Instead, the Supplemental Briefs indicate that the CLPs do not entirely understand the rates proposed by the ILECs, and the ILECs do not entirely understand why the CLPs disagree with certain proposed rates. The Commission believes that the Parties should have done a much better job in communicating with one another and made a true attempt at negotiation.

With that being said, and based upon the comments filed, the Commission believes that it is appropriate at this point in time to request the Public Staff to file written comments on the disputed cross-connect rates proposed by BellSouth, Sprint, and Verizon by no later than Wednesday, November 13, 2002.

The Commission further notes that it appears that Verizon's proposed rates may be in conflict with prior Commission Orders. Specifically, the Commission notes that Verizon stated, ". . .it seeks only the cost of the cross-connect material, the time to place that material, and the costs incurred for the time to receive, process, and provision the CLP's order through the Access Service Request (ASR) system." The Commission notes that in its September 3, 2002 *Order Addressing Disputed Language in the Standard Offering* the Commission found as follows:

> The Commission considers the record to be insufficient to determine what the submission of an ASR would encompass and concludes that the ILECs' proposal to require the submission of such should be eliminated. [Page 46]

The Commission also notes that Verizon commented that "it suspects that the CLPs object to the manner in which Verizon offers CLP-to-CLP connections (i.e., Verizon requires the circuit to traverse ILEC equipment)". The CLPs maintained that with regard to co-carrier cross-connects, Verizon's proposed rates are not premised on direct CLP-to-CLP connections. The Commission notes that in its September 3, 2002 *Order Addressing Disputed Language in the Standard Offering* the Commission found as follows:

> Based upon our review of the Standard Offering, the Commission has found that in Section 5.5 of the Standard Offering which is titled 'Co-Carrier Cross Connect (CCXC)', the ILECs and the CLPs have agreed upon all the language to be included in that section. There are two sentences in that agreed-upon language which seem to be very relevant to the issue at hand. Those sentences are as follows:
>
> > At the request of the CLP, the ILEC must provide such co-carrier cross connects (CCXCs), unless the ILEC allows the CLP to provision its own CCXC or the CCXC is not required as established by 47 C.F.R. §51.323 (h) (2). At the CLP's option, CCXCs may be made using copper, dark fiber, lit fiber, optical or electrical facilities or other transmission medium, and may be

> deployed directly between its own facilities and the facilities of other Interconnector(s) without being routed through ILEC equipment. (Emphasis added.) [Page 36]

> The Commission concludes that . . . (2) the CLPs' proposal to include language recognizing that the CLP may deploy connections directly between its own facilities and the facilities of other collocators without being routed through the ILEC's equipment is appropriate. . . [Page 54]

Finally, the Commission believes that Sprint should be required to provide a specific proposed rate for lit fiber cross-connects instead of reflecting a rate of ICB for that element. Therefore, the Commission finds it appropriate to require Sprint to file a cost study and a proposed rate for lit fiber cross-connects by no later than Thursday, October 24, 2002 and to allow the CLPs and the Public Staff the opportunity to file written comments on Sprint's proposed rate by no later than Wednesday, November 13, 2002.

CONCLUSIONS

The Commission finds it appropriate to request the Public Staff to file written comments on the disputed cross-connect rates proposed by BellSouth, Sprint, and Verizon by no later than Wednesday, November 13, 2002. Further, the Commission finds it appropriate to require Sprint to file a cost study and a proposed rate for lit fiber cross-connects by no later than Thursday, October 24, 2002 and to allow the CLPs and the Public Staff the opportunity to file written comments on Sprint's proposed rate by no later than Wednesday, November 13, 2002.

RATE ISSUE NO. 2: Cable Installation

SUPPLEMENTAL BRIEFS

BELLSOUTH: BellSouth proposed a nonrecurring rate of $1,701 (Element H.1.5) for cable installation. The CLPs did not agree to this proposed rate.

CLPS (BELLSOUTH): The CLPs did not address the cable installation rate proposed by BellSouth.

SPRINT: Sprint stated that in the *Order Addressing Collocation Issues*, the Commission questioned whether there was any difference between cross-connects and the issue of cable installation. Sprint noted that it believes costs for cross-connects and cable installation are the same and, therefore, Sprint did not propose additional rates for cable installation.

CLPS (SPRINT): The CLPs noted that Sprint disagreed with the CLPs, and the other ILECs, in contending that "there is no difference between cross-connects and the issue of cable installation." The CLPs maintained that they have assumed, along with BellSouth and Verizon, for purposes of negotiating these rates that "cable installation" refers to the installation of entrance facilities, as distinguished from CCXCs, cross-connects from the collocation space to the MDF (and cross-connects to and from a POT bay). The CLPs argued that other anomalies exist. The CLPs noted that Line Item No. 13 (12 fiber high-frequency cable) is more difficult to provision than Line Item No. 10 (6 DS3 high-frequency cable), yet the proposed cost of the latter is higher than the proposed cost of the former. The CLPs argued that Line Item No. 16 (lit fiber cross-connect) is proposed as ICB pricing, but the other ILECs have proposed specific rates for this element, and it is not clear why lit fiber should be any different.

VERIZON: Verizon maintained that cable installation typically precedes the provisioning of a cross-connect. Verizon noted that cable installation is the installation of the CLP-provided cable from the manhole into the central office and to the CLP's collocation space. Verizon stated that once cable is installed, the CLP will terminate that cable onto its equipment, however, the CLP still must interconnect with Verizon's network. Verizon argued that interconnection occurs through cross-connections to Verizon's network and, if requested, to another CLP's network that is already interconnected to Verizon's network. Verizon maintained that consequently, these are different activities, and Verizon is entitled to recover its costs for both.

Verizon has proposed the following rates for cable installation which the CLPs have not agreed to:

Rate Element	Verizon Proposed NRC	Verizon Proposed MRC
Fiber Cable Pull – Engineering	$606.30	
Fiber Cable Pull – Place Innerduct	$2.27	
Fiber Cable Pull – Labor	$0.93	
Fiber Cable Pull – Cable Fire Retardant	$44.37	
Fiber Splice – Engineering	$30.32	
Fiber Cable Splice	$49.33	
Cable Subduct Space – Manhole		$3.47
Cable Subduct Space		$0.03
Fiber Cable Vault Splice – 48 Fiber – Material		$6.24
Fiber Cable Vault Space – 48 Fiber		$0.63
Fiber Cable Vault Splice – 96 Fiber – Material		$17.85
Fiber Cable Vault Space – 96 Fiber		$0.63
Cable Rack Space – Fiber		$0.01

Verizon noted that it provided to the CLPs rate elements previously provided in the original cost study for the cost of cable installation from the collocation space to Verizon's MDF. Verizon stated that the CLPs responded that this category should instead represent the cost of cable installation from the manhole outside of the central office to the collocation space. Verizon countered stating that those rates had already been provided in the original cost study, but nevertheless, Verizon relisted the elements for the CLPs. Verizon noted that it has received no substantive feedback from the CLPs on any of the rate elements.

Verizon argued that the CLPs' refusal to accept Verizon's cable installation NRCs is inexplicable. Verizon maintained that it is entitled to recover its costs for pulling and, where required, splicing this cable. Verizon asserted that it is at a loss as to how to respond to the CLPs' objection to these NRCs.

Verizon noted that with respect to its MRCs for cost recovery of cable space utilization, the CLPs' use of Verizon's subduct space is no different conceptually from their use of Verizon's floor space. Verizon argued that the CLPs ignore Verizon's right to recover costs for use of such space without explanation.

CLPS (VERIZON): The CLPs noted that Verizon's cable installation rates do not appear to assume, in every instance, their applicability to entrance facilities. The CLPs stated that, for example, Line Item No. 37 refers to a "patch cord", which would not be used in entrance facilities. The CLPs stated that in other respects, it is unclear how Verizon's proposed rates are calculated. The CLPs maintained that it is not clear, for example, how CLPs would gain entry to the central office if collocating adjacent to the central office (it appears that Verizon assumes CLPs will plow a path from the parking lot to the manhole). The CLPs stated that the adjacent collocation, instead, typically should be connected to the central office with an armored conduit. Hence, the CLPs concluded that on balance Verizon's proposed rates are not based on efficient, forward-looking assumptions, and should be rejected.

DISCUSSION

Again, the Commission is disappointed in the lack of negotiating that occurred on this issue. The Commission believes that the Parties failed miserably in carrying out the Commission's directive for the Parties to attempt to negotiate rates for cable installation.

Based upon the comments filed, the Commission believes that it would be appropriate at this point in time to request the Public Staff to file written comments on the disputed cable installation rates proposed by BellSouth, Sprint, and Verizon by no later than Wednesday, November 13, 2002. The Commission notes that Sprint has not proposed rates for cable installation since it takes the position that those costs are reflected in its proposed rates for cross-connects.

CONCLUSIONS

The Commission finds it appropriate to request the Public Staff to file written comments on the disputed cable installation rates proposed by BellSouth, Sprint, and Verizon by no later than Wednesday, November 13, 2002.

RATE ISSUE NO. 3: Augments

SUPPLEMENTAL BRIEFS

BELLSOUTH: BellSouth stated that it has proposed interim rates for augments (Elements H.1.63 (simple), H.1.64 (minor), and H.1.65 (intermediate)). BellSouth noted that there is a current dispute between the Parties concerning how augments should be done. BellSouth noted that the Joint Briefs submitted on April 15, 2002 concerning the disputed language in the Standard Offering state that Verizon and Sprint provision the augments and in contrast, the CLPs and BellSouth originally agreed on intervals for augments that assumed that the CLP would provision the augment. BellSouth noted that the ILECs proposed bifurcating the augment language to distinguish between a situation in which the ILEC provisions the augment and a situation in which the CLP provisions the augment. BellSouth stated that the CLPs have rejected this proposal and have proposed different terms and conditions for augmentation. BellSouth maintained that until this dispute is resolved by the Commission, it is not possible for BellSouth to develop a cost study upon which a permanent rate could be based. BellSouth noted that the decision as to how augments should be performed, and the appropriate intervals, will affect the cost of the Application Fee.

Therefore, BellSouth argued, it has offered the CLPs interim Application Fees subject to true-up. BellSouth proposed no charge for a simple augment (Element H.1.63), $741.44 for a minor augment (Element H.1.64), and $2,311 for an intermediate augment (Element H.1.65). BellSouth noted that the CLPs have responded to BellSouth's proposal only by stating that they believe BellSouth should be able to develop permanent cost studies at this juncture. BellSouth maintained that this position ignores the fact that there are issues regarding the provisioning of augmentation and the appropriate intervals that have not yet been resolved.

CLPS (BELLSOUTH): The CLPs noted that for augments, they accept BellSouth's proposed rate for Element H.1.63 (which is $0.00) and ask that it be made permanent. The CLPs stated that for the other proposed rates for augments, the Commission directed the Parties to negotiate concerning what augments should be placed in which categories. The CLPs noted that as discussed in their Brief on the disputed language, early in negotiations the CLPs acceded to the language proposed (albeit tentatively) by the ILECs. The CLPs stated that the language now is designated as the "CLP Proposal" for each section, and lists the types of augments for each category. The CLPs maintained that the ILECs then proposed different language, which leaves unresolved the issue of who provisions augments and the types of augments that ILECs may provision, as opposed to the types of augments that CLPs may provision. Hence, the CLPs argued, the Parties are unable to agree on which augments should be placed in which category, and BellSouth has not provided the "back-up" support for the augments it proposes. The CLPs noted that because it is not settled as to which augments should be placed in which categories of augments, the Parties have been unable to agree on language for Sections 9.4 and 9.5 of the Standard Offering, and hence the Commission needs to resolve that issue before it can be understood which rates are appropriate for each category of augments.

SPRINT: Sprint stated that it proposes rates for minor and major levels of augments.

Sprint maintained that minor augments encompass such things as conversion of virtual collocation to cageless, adding DC power cables of 60 amps or less, changing the size of the fuse for DC power, and adding cross-connects. Sprint noted that its proposed rate for a minor augment is now $858.69 (**COMMISSION NOTE:** Sprint's Attachment A lists a proposed rate of $859.46), or 34% less than Sprint's originally proposed augment fee of $1,294.08.

Sprint noted that major augments encompass such things as space additions and canceling and decommissioning collocation arrangements. Sprint stated that its proposed rate for a major augment is $1,399.17 (**COMMISSION NOTE:** Sprint's Attachment A lists a proposed rate of $1,400.43), only slightly higher than the original proposed rate of $1,294.08.

Sprint argued that in a recently drawn sample of augment workorders, 93% of those augments fell into the minor category. Therefore, Sprint maintained, adoption of Sprint's proposed rates for augments should result in lower overall costs for CLPs.

Sprint asserted that augments, similar to new applications for collocation, require processing of an application and planning for the provisioning of services. Sprint noted that this process incorporates much coordination between Sprint and the CLP to ensure that Sprint meets the CLP's needs. Sprint argued that processing an application for an augment often calls for customization which may take considerable time.

CLPS (SPRINT): Concerning Sprint, the CLPs noted that the Parties cannot agree on the appropriate augment categories. The CLPs stated that Sprint has distinguished "minor augments" (Line Item No. 1) from "major augments" (Line Item No. 2). The CLPs maintained that the *Order Addressing Collocation Issues,* however, adopted Sprint's then proposed categories of "simple", "minor", "intermediate", and "major". The CLPs argued that Sprint's Line Item Nos. 1 and 2 do not conform to the categories previously proposed by Sprint and adopted by the Commission and do not conform to the categories of augments proposed by the ILECs or CLPs as Sections 9.4 and 9.5 of the Standard Offering. The CLPs noted that Sprint has told the CLPs that the classifications of the *Order Addressing Collocation Issues* do not necessarily imply differing levels of administrative and engineering effort required to make a price quote to CLPs. The CLPs argued that as a general proposition, this assertion may be correct, but Sprint's statement, which by its own terms limits its effect, implies that, indeed, the classifications ordered by the Commission do result in different types of augments that should be placed in different categories.

The CLPs also noted that the Commission directed the Parties to negotiate concerning what augments should be placed in which categories. The CLPs stated that early in negotiations the CLPs acceded to the language proposed by the ILECs. The CLPs noted that the language now is designated as the "CLP Proposal" for each section, and lists the types of augments for each category. The CLPs maintained that the ILECs, including Sprint, then proposed different language. Therefore, the CLPs asserted that the Parties are unable to agree on which augments should be placed in which category. The CLPs stated that the Commission should direct Sprint to produce forward-looking cost-based rates that conform to the categories identified in the *Order Addressing Collocation Issues* and that conform to the types of augments for each category as initially proposed by the ILECs and agreed to by the CLPs.

VERIZON: Verizon stated that it proposed a simplified major augment versus minor augment rate structure. Verizon noted that it will need to modify its structure in accordance with the Commission's ruling on Verizon's Motion for Reconsideration and Clarification. Verizon maintained that the CLPs want a structure that reflects Sprint's proposed categories for provisioning intervals. Verizon argued that the Commission's ordering of Sprint's categories for provisioning interval purposes does not necessitate that Verizon's rate structure for augments mirror those categories; the augment fee is not tied to the length of time to provision the augment. Verizon noted that the costs that comprise the augment fee are based upon Verizon's engineering and planning activities required to assess the impact of the requested augment on

Verizon's network. Verizon stated that this planning and engineering activity is required to provide the CLPs with a price quote for the augment and to actually provision the augment.

Verizon asserted that a minor augment requesting additional cross-connects requires significantly less planning and engineering time than a major augment requesting a doubling of its caged or cageless collocation arrangement. Verizon maintained that the major augment will require significant analysis to determine the impact of the addition on existing infrastructure such as HVAC, power, and overhead superstructure if it is determined that space is available. Verizon noted that the costs associated with actually provisioning either the major or minor augment request are identified in the rate elements specifically associated with the required activities.

Verizon proposed the following rates for augments which the CLPs do not agree to:

Rate Element	**Verizon Proposed NRC**
Minor Augment Fee	$199.42
Major Augment Fee	$1,267.64

Verizon stated that because of its simplicity in application and administration, Verizon's major/minor rate structure is more desirable than Sprint's four separate rate elements for augments. Verizon maintained that the augment fee will vary based on the magnitude of the revision and a new interval for the physical collocation arrangement may need to be established based upon the extent of the revisions.

CLPS (VERIZON): Addressing Verizon's proposed rates for augments, the CLPs stated that the Parties cannot agree on the categories. The CLPs noted that Verizon has distinguished "minor augments" from "major augments". The CLPs stated that the *Order Addressing Collocation Issues*, however, adopted the categories of "simple", "minor", "intermediate", and "major." The CLPs maintained that Verizon's line items regarding augments do not conform to the categories adopted by the Commission and do not conform to the categories of augments proposed by the ILECs or CLPs as Sections 9.4 and 9.5 of the Standard Offering. The CLPs noted that the Commission also directed the Parties to negotiate concerning what augments should be placed in which categories. The CLPs noted that early in negotiations the CLPs acceded to the language proposed by the ILECs. The CLPs maintained that the language now is designated as the "CLP Proposal" for each section, and lists the types of augments for each category. The CLPs noted that the ILECs then proposed different language, and, hence, the Parties are unable to agree on which augments should be placed in which category.

DISCUSSION

The Commission does not agree with the CLPs that in our December 2001 *Order Addressing Collocation Issues* we adopted the categories of simple, minor, intermediate, and major augments for rates. The Commission notes that we adopted those categories for establishing provisioning intervals (See Pages 297 through 300 of the *Order Addressing Collocation Issues*) and were silent on the issue of augmenting categories for establishing rates. However, the Commission does believe that it is reasonable and appropriate to apply the same categories adopted for provisioning intervals of augments when setting rates for augments. The

Commission does not believe that the two categories of minor and major as proposed by Sprint and Verizon provide an adequate number of augment categories to establish rates upon.

The Commission also notes that we have made a decision concerning the disputed language on augments referenced by BellSouth, as reflected in our September 3, 2002 *Order Addressing Disputed Language in the Standard Offering*. The Commission notes that we stated in our September 3, 2002 Order

> The Commission believes that the ILECs certainly have the obligation to provision augments. Additionally, while there may be instances in which the CLP or ILEC-certified contractor provisions an augment, this should be viewed as an option which could be exercised by the CLPs. The Commission is opposed to the bifurcated language proposed by the ILECs. The Commission believes that the ILECs' proposed language would result in disagreements among the Parties concerning who should be responsible for augments and what level of services is to be provided within a particular augmentation. The Commission finds it appropriate to reject the ILECs' bifurcated language and to adopt the CLPs' proposed language. [page 76]

Therefore, BellSouth's position that permanent rates for augments cannot be proposed until a decision on the disputed language is entered into by the Commission is now a moot point.

The Commission finds it appropriate to require Sprint and Verizon to refile cost studies and proposed rates reflecting the four categories of simple, minor, intermediate, and major augments by no later than Thursday, October 24, 2002. The CLPs and the Public Staff will be given the opportunity to file written comments on the rates proposed by no later than Wednesday, November 13, 2002. Further, the Commission instructs BellSouth to file cost studies and proposed permanent rates for augments using the four categories of simple, minor, intermediate, and major, and reflecting the September 3, 2002 decision made by the Commission on the disputed language in the Standard Offering by no later than Thursday, October 24, 2002. The CLPs and the Public Staff will be given the opportunity to file written comments on the rates proposed by no later than Wednesday, November 13, 2002.

CONCLUSIONS

The Commission finds it appropriate to:

(1) Instruct Sprint and Verizon to refile by no later than Thursday, October 24, 2002 cost studies and proposed rates for simple, minor, intermediate, and major augments and allow the CLPs and the Public Staff the opportunity to file written comments on the rates proposed by no later than Wednesday, November 13, 2002; and

(2) Instruct BellSouth to file cost studies and proposed rates by no later than Thursday, October 24, 2002 for augments using the four categories of simple, minor, intermediate, and major and reflecting the September 3, 2002 decision made by the Commission on the disputed language in the Standard Offering and allow the CLPs and the Public Staff the opportunity to file written comments on the rates proposed by no later than Wednesday, November 13, 2002.

RATE ISSUE NO. 4: Adjacent Collocation

SUPPLEMENTAL BRIEFS

BELLSOUTH: BellSouth has proposed the following rates for adjacent collocation:

Element #	Description	MRC	NRC	NRC – First	NRC – Additional
H.4.1	Adjacent Collocation – Space Cost per Sq. Ft.	$0.1555*			
H.4.2	Adjacent Collocation – Electrical Facility Cost per Linear Foot	$5.78			
H.4.3	Adjacent Collocation – 2-Wire Cross-Connect	$0.0239*		$33.53	$31.65
H.4.4	Adjacent Collocation – 4-Wire Cross-Connect	$0.0477*		$33.67	$31.70
H.4.5	Adjacent Collocation – DS1 Cross-Connect	$1.28*		$52.87	$39.86
H.4.6	Adjacent Collocation – DS3 Cross-Connect	$17.35*		$51.97	$38.59
H.4.7	Adjacent Collocation – 2-Fiber Cross-Connect	$2.94*		$51.97	$38.59
H.4.8	Adjacent Collocation – 4-Fiber Cross-Connect	$5.62*		$64.53	$51.15
H.4.9	Adjacent Collocation – Application Cost		$2,287.00		
H.4.16	Adjacent Collocation – 120V, Single Phase Standby Power Cost per AC Breaker Amp	$5.50			
H.4.17	Adjacent Collocation – 240V, Single Phase Standby Power Cost per AC Breaker Amp	$11.01			
H.4.18	Adjacent Collocation – 120V, Three Phase Standby Power Cost per AC Breaker Amp	$16.51			
H.4.19	Adjacent Collocation – 277V, Three Phase Standby Power Cost per AC Breaker Amp	$38.12			

As noted with an asterisk in the above table (*), the CLPs have agreed to the rates BellSouth has proposed for the following elements:

H.4.1
H.4.3 **(MRC only)**
H.4.4 **(MRC only)**
H.4.5 **(MRC only)**
H.4.6 **(MRC only)**
H.4.7 **(MRC only)**
H.4.8 **(MRC only)**

BellSouth argued that the CLPs have refused to accept BellSouth's proposed rates for adjacent collocation set forth in Elements H.4.16, H.4.17, H.4.18, H.4.19, which are for the provision of, respectively, 120V Single Phase AC Power, 240V Single Phase AC Power, 120V Three Phase AC Power, and 277V Three Phase AC Power. BellSouth maintained that these proposed rates are precisely the same as the physical collocation rates ordered by the Commission for exactly the same power elements (H.1.50, H.1.51, H.1.52, and H.1.53).

BellSouth also noted that on April 2, 2002, in response to correspondence from the CLPs, BellSouth proposed a reduced nonrecurring rate of $2,287 for Adjacent Collocation - Application Cost (Element H.4.9). BellSouth maintained that this proposed rate is lower than the nonrecurring rate of $2,322 for Physical Collocation – Application Cost – Initial (Element H.1.1) and is also lower than the nonrecurring rate of $2,311 for Physical Collocation – Application Cost – Subsequent (Element H.1.46). BellSouth argued that the rates for Elements H.1.1 and H.1.46 were adjusted based on the 24-hour interval the Commission ordered to be used in the cost study for those elements, and these rates will presumably be approved by the Commission. BellSouth stated that the costs involved in processing an application for physical collocation and for adjacent collocation are very similar, and this similarity is reflected in BellSouth's proposed rate for adjacent collocation - application fee. BellSouth noted that why the CLPs would reject this proposed rate for Element H.4.9, when very similar (and slightly higher) rates will presumably be approved by the Commission for almost identical processes, is a mystery.

CLPS (BELLSOUTH): The CLPs noted that for rate element H.4.2, BellSouth's proposed rates for Georgia for these elements are much lower ($5.23 and $4.01, respectively, depending on which methodology is used) than proposed for North Carolina. The CLPs also stated that for rate element H.4.9, the CLPs are unable to accept BellSouth's rate for several reasons. First, the CLPs argued that a carrier does not apply for adjacent collocation. The CLPs maintained that a CLP applies for physical collocation; if space is found to be unavailable in the central office, the ILEC then considers the availability of space on the property in which the central office is situated. Moreover, the CLPs asserted, before the CLP is relegated to adjacent collocation, the ILEC must have removed unused, obsolete equipment and nonessential administrative personnel from the central office, consistent with the Commission's *Order Addressing Collocation Issues.* Hence, the CLPs maintained, space initially thought to be unavailable in the central office may be found to be available, upon further review, which may involve the Commission. Second, the CLPs noted, the FCC's pricing rules are premised on reconstructing a "scorched" central office based on the collocation demand. The CLPs maintained that this effort, if undertaken in an effectively competitive market, should not only reduce the instances in which adjacent collocation – as distinguished from collocation inside the central office – would occur; it would result in pricing that is not premised on specifically placing a CLP outside the central office, particularly to the extent that costs are higher (to the ILEC or CLP) as a result of placing collocation space outside of the central office. The CLPs stated that this is because ILECs in an effectively competitive market would have to compete for CLP customers, and CLPs that would encounter higher costs, from building huts, installing facilities, etc., outside a central office would instead seek to collocate with an ILEC that facilitated lower costing collocation. Third, the CLPs noted, BellSouth includes a component for the rate it proposed for H.4.9 that contains costs for "real estate support". The CLPs argued that this component is unnecessary, because the CLP's contractor designs and provisions the work to be done. The CLPs stated that if the ILEC is contracted to do the work, the CLP is charged based on provisioning fees, not application fees. The CLPs concluded that they do not accede to BellSouth's application rates because they continue to be excessive.

The CLPs noted that as for rate elements H.4.16 through H.4.19, as discussed in their Brief on the disputed language, BellSouth inappropriately inflates power costs. The CLPs argued that the same considerations apply to these elements. The CLPs asserted that in applying a 150% factor to convert the cost from an average used amp to a fused amp, BellSouth incorrectly assumes that fuses are engineered to equal 150% of the average power consumption expected over the life of the feeder (fuse). The CLPs stated that, in fact, fuses and feeder cables are not engineered to 150% of the average load; they are engineered to 150% of the anticipated peak load at its ultimate capacity. The CLPs noted that this is because of the substantial cost of augmenting power when the collocation cage is fitted for additional equipment requiring additional power. The CLPs stated that, for example, if the peak ultimate demand were projected to be 150 amps, the power feeder to the collocated cage would be fused at 225 amps (150 amps x 150%). The CLPs maintained that the actual power drainage at the collocation cage may only be 25 amps and grow several times before peak demand is reached, if, in fact, it is ever reached. The CLPs argued that in most cases the feeder circuit will never be loaded to its full peak capacity. The CLPs stated that it would be a violation of engineering standards and National Electrical Code guidelines to load the fuse to 67% based on the average drain.

The CLPs also asserted that as is apparent from its proposal, BellSouth does not intend to provide for DC power. The CLPs stated that BellSouth is categorically refusing to provide DC power, which is the same position BellSouth took before the *Order Addressing Collocation Issues* was issued. However, the CLPs maintained, the Commission squarely rejected BellSouth's categorical position. The CLPs noted that the Commission instead stated clearly that an ILEC should be required to demonstrate technical infeasibility to the Commission before rejecting a request for DC power to an adjacent collocation. The CLPs stated that having already lost on this issue, BellSouth nonetheless makes one final pitch for its argument, through the structure of its proposed rate elements. The CLPs argued that BellSouth completely ignores the fact, as it ignored the facts throughout previous negotiations and the hearing, that adjacent collocation in most instances will occur next to the central office and, if necessary, DC power may be provided through armored or concrete encased conduit. The CLPs concluded that BellSouth must propose a forward-looking, nondiscriminatory rate for DC power to adjacent collocation; its continued refusal to do so borders on contumacy.

SPRINT: Sprint maintained that it has never had an order for adjacent collocation. Sprint stated that as there has thus far been no demand for adjacent collocation and as there are many variables in its provisioning due to various local zoning laws and differences in central offices, Sprint believes that it is appropriate to provision and bill for adjacent collocation on an individual case basis (ICB). Sprint noted that provisioning and billing on an ICB is an accepted practice when there are variables such as zoning or central office differences which could cause wide variances in the methods of provisioning and the resulting rates.

CLPS (SPRINT): Concerning Sprint, the CLPs stated that Sprint, unlike the other ILECs, has failed to propose specific rate elements for adjacent collocation. The CLPs noted that Sprint contended that adjacent collocation is inherently a matter of ICB pricing. The CLPs argued that Sprint confuses the provisioning of adjacent collocation, which necessarily takes into consideration certain characteristics of the premises of central offices and other ILEC installations, with the pricing of adjacent collocation. The CLPs maintained that the fact that Sprint has never had an order for adjacent collocation has apparently not been a hindrance to the other ILECs (who also probably have not provisioned adjacent collocation, at least not in North Carolina) in this proceeding, and does not prevent standardized pricing. The CLPs asserted that similar arguments were advanced by ILECs with regard to collocation in central offices before regulatory agencies required them to standardize collocation rates. The CLPs stated that even if Sprint were correct in asserting that adjacent collocation is on the whole a matter of ICB pricing, not every aspect of adjacent collocation provisioning is inherently unique.

VERIZON: Verizon noted that adjacent collocation occurs when there is no space within the central office for collocators, but there is space for the CLP on the Premises to erect a structure for its collocation equipment. Verizon maintained that the equipment must be connected to Verizon's network, just like a CLP's equipment in a caged or cageless arrangement physically located in the central office.

Verizon has proposed the following rates for adjacent collocation which the CLPs have **not** agreed to:

Rate Element	Verizon Proposed NRC
Adjacent – Engineering Fee Onsite	$958.00
Adjacent Fiber Cable Pull – Engineering	$606.30
Adjacent Fiber Cable Pull – Place Innerduct	$2.27
Adjacent – Cable Fire Retardant	$44.37
Adjacent Metallic Cable Pull – Engineering	$606.30
Adjacent Metallic Cable Splice – Engineering	$30.32
Adjacent Metallic Cable Splicing (greater than 200 pair)	$1.38
Adjacent Metallic Cable Splicing (less than 200 pair)	$1.38
Adjacent Fiber Cable Splicing – Engineering	$30.32
Adjacent Fiber Cable Splicing (48 fiber cable or less)	$49.33
Adjacent Fiber Cable Splicing (greater than 48 fiber)	$41.54
Adjacent DS0 Cable Termination (Unconnectorized)	$44.37
Adjacent DS3 Coaxial Termination (Connectorized)	$1.11
Adjacent DS3 Coaxial Termination (Unconnectorized)	$11.09
Adjacent Fiber Cable Termination	$49.33
Adjacent Subduct Space – Manhole	$3.47
Adjacent Subduct Space	$0.03
Adjacent Conduit Space (4" Duct) – Metallic – Manhole	$6.29
Adjacent Conduit Space (4" Duct) – Metallic Cable	$0.03
Adjacent Facility Termination DS0 Cable – Material	$2.68
Adjacent Facility Termination DS1 Cable – Material	$11.02
Adjacent Facility Termination DS3 Cable – Material	$7.75
Adjacent Cable Vault Space (per 1200 pr) – Material	$224.35
Adjacent Cable Vault Space (per 1200 pr)	$2.33
Adjacent Cable Vault Space (per 900 pr) – Material	$163.38
Adjacent Cable Vault Space (per 900 pr)	$2.11
Adjacent Cable Vault Space (per 600 pr) – Material	$108.18
Adjacent Cable Vault Space (per 600 pr)	$1.50
Adjacent Cable Vault Space (per 100 pr) – Material	$22.84
Adjacent Cable Vault Space (per 100 pr)	$0.34
Adjacent Cable Vault Space (48 fiber) – Material	$6.24
Adjacent Cable Vault Space (48 fiber)	$0.63
Adjacent Cable Vault Space (96 fiber) – Material	$17.85
Rate Element	Verizon Proposed NRC
Adjacent Cable Vault Space (96 fiber)	$0.63
Adjacent Cable Rack Space – Metallic DS0	$0.003
Adjacent Cable Rack Space – Metallic DS1	$0.002
Adjacent Cable Rack Space – Fiber	$0.005
Adjacent Cable Rack Space – Coaxial	$0.01

Verizon stated that the CLPs have agreed to the following rates:

Rate Element	Verizon Proposed NRC
Adjacent Fiber Cable Pull – Labor	$0.93
Adjacent Metallic Cable Pull – Labor	$1.05
Adjacent Facility Pull – Engineering	$78.19
Adjacent Facility Pull – Labor	$1.11
Adjacent DS0 Cable Termination (Connectorized)	$4.44
Adjacent DS1 Cable Termination (Connectorized)	$1.11
Adjacent DS1 Cable Termination (Unconnectorized)	$33.28

Verizon noted that the adjacent collocation rate elements recover labor and material costs for engineering projects, for pulling cable, terminating cable, splicing cable, and utilization of racks and vaults. Verizon stated that it does not develop cost elements associated with the construction of the building in which the adjacent collocator's equipment is housed, DC power costs, or HVAC because these activities can be as efficiently performed by the CLP, giving the CLP more control over the construction and completion of the adjacent structure.

Verizon maintained that the CLPs do accept the labor oriented rates (pulling cable and termination of DS0 and DS1), but, like with cross-connects, fail to recognize the legitimacy of Verizon's recovery of all of its costs. Verizon argued that it is entitled to recover material costs for the block to which the cable terminates and the racking necessary to run the cable from the CLP's collocation space to Verizon's network. Verizon asserted that without additional explanation from the CLPs, it is difficult to determine if the concern is with a certain aspect of the cost, the proposed recovery method, or the legitimacy of the entire rate element. Verizon argued that the rate elements at issue here are developed through the same methodology used for estimating material costs included in other rate elements approved in the Commission's *Order Addressing Collocation Issues*. Verizon noted that the material loading factors, annual charge factors, and other inputs that are part of these disputed rate elements are identical to comparable factors and inputs approved by the Commission in its *Order Addressing Collocation Issues*. Verizon concluded that the time has passed to challenge methodologies or inputs already approved by the Commission.

CLPS (VERIZON): The CLPs did not address Verizon's proposed adjacent collocation rates other than to confirm that they agree with the rates outlined above.

DISCUSSION

In addressing BellSouth's proposed rates for adjacent collocation, the Commission notes that Finding of Fact No. 34 of our December 28, 2001 *Order Addressing Collocation Issues* states

> ILECs are required to provide AC and DC power from the central office to adjacent collocation, upon request, where technically feasible. This power should have the same performance and reliability characteristics as the power that the ILEC provides to collocations within its central office. The CLP should have the

option to secure its own AC power to the adjacent structure from the same provider that furnishes commercial AC power to the ILEC. The ILEC should only be required to provide the power to the demarcation point of the adjacent collocation site. Any converting or fusing of the power source beyond that point will be the responsibility of the CLP. If an ILEC receives a request to provide power to an adjacent collocation space, within 45 days the ILEC and the CLP shall either negotiate a mutually agreed-upon price or the ILEC shall submit a cost study and proposed generic rates for providing power to adjacent collocation spaces for Commission approval.

The Commission notes that the CLPs have asserted that BellSouth does not intend to provide for DC power to adjacent collocation spaces. The Commission believes that if the CLPs' assertion is correct, BellSouth's proposed rates in this regard are not in compliance with our *Order Addressing Collocation Issues.*

The Commission believes that it is appropriate at this point in time to request the Public Staff to file written comments on the disputed adjacent collocation rates BellSouth proposed by no later than Wednesday, November 13, 2002 with specific comments on the CLPs' assertion that BellSouth's proposed rates indicate that BellSouth does not intend to provide for DC power to adjacent collocation spaces.

Concerning Sprint, the Commission notes that Sprint has not filed any proposed rates for adjacent collocation, instead arguing that rates for adjacent collocation should be based on an ICB. The Commission agrees with the CLPs' argument that the fact that Sprint has never had an order for adjacent collocation has apparently not been a hindrance to the other ILECs in this proceeding, and does not prevent standardized pricing. Therefore, the Commission finds it appropriate to instruct Sprint to file cost studies and proposed rates for adjacent collocation by no later than Thursday, October 24, 2002 and to allow the CLPs and the Public Staff an opportunity to file written comments on those proposed rates by no later than Wednesday, November 13, 2002.

For Verizon, the Commission believes that it is appropriate at this point in time to request the Public Staff to file written comments on the disputed adjacent collocation rates Verizon proposed by no later than Wednesday, November 13, 2002.

CONCLUSIONS

The Commission finds it appropriate to:

(1) request the Public Staff to file written comments on the disputed adjacent collocation rates BellSouth proposed by no later than Wednesday, November 13, 2002;

(2) instruct Sprint to file a cost study and proposed rates for adjacent collocation by no later than Thursday, October 24, 2002 and to allow the CLPs and the Public Staff the opportunity to file written comments on those proposed rates by no later than Wednesday, November 13, 2002; and

(3) request the Public Staff to file written comments on the disputed adjacent collocation rates Verizon proposed by no later than Wednesday, November 13, 2002.

RATE ISSUE NO. 5: Premises Space Report

SUPPLEMENTAL BRIEFS

BELLSOUTH: BellSouth did not address this issue in its Supplemental Brief.

SPRINT: Sprint believes that its proposed nonrecurring rate of $889.97 for Premises Space Reports was acceptable to the CLPs. Sprint stated that should its understanding be incorrect or should the Commission desire additional information, Sprint wishes to reserve the right to amend its Brief to address the rate for these reports.

VERIZON: Verizon noted that the Parties have agreed to Verizon's proposed nonrecurring rate of $1,217.52 for Premise Space Reports.

CLPS: The CLPs stated that none of the CLPs order space availability reports given the ILECs' current and proposed cost of these reports and the CLPs' ability to obtain similar information through the application process. Hence, the CLPs maintained, the CLPs acceded to the rates for the premises space report (space availability report) proposed by each ILEC.

Specifically, the CLPs stated that they agreed to BellSouth's proposed Rate Element H.1.47 – Space Availability Report, but footnoted that BellSouth considers its proposed rate for a space availability report to be Commission-ordered rather than a rate to be negotiated between the Parties. The CLPs also stated that they agreed to Verizon's proposed rate element #98 Premises Space Report and Sprint's proposed rate element Line No. 3 – Premises Space Report Per Request.

The CLPs stated that they accede to Sprint's rate for Line No. 3, "Premises Space Report Per Request" since CLPs are not ordering space availability reports.

Addressing Verizon's proposed rate for Premises Space Report, the CLPs noted that they agree with Verizon's proposed Item No. 98 – Premises Space Report (a nonrecurring charge of $1,217.52 per central office requested).

DISCUSSION

The CLPs have acceded to the ILECs' proposed rates for Premises Space Report. Therefore, the Commission finds it appropriate to accept the negotiation and adopt BellSouth's, Sprint's, and Verizon's proposed Premises Space Report rates.

CONCLUSIONS

The Commission finds it appropriate to accept the negotiation of this rate element and adopt BellSouth's, Sprint's, and Verizon's proposed Premises Space Report rates.

SECTION II - TRUE-UP PROPOSALS

ILECS' TRUE-UP PROPOSALS FILED MAY 6, 2002

BELLSOUTH: BellSouth filed its proposed true-up, which would entail BellSouth sending a letter to all CLPs with active physical collocation arrangements after the Commission issues its order approving permanent collocation rates in this docket. The proposed letter states that pursuant to the terms of the CLP's Interconnection Agreement, the CLP may request that BellSouth prepare a proposed true-up showing: (1) the interim rates and charges for each service; (2) the permanent rates and charges for each service; and (3) the net amount due. BellSouth's proposed letter continues by stating that if the CLP notifies BellSouth that it wishes to pursue a true-up, the CLP will be given a period of 21 calendar days from the receipt of the proposed true-up data in which to verify and/or dispute the accuracy of the information provided by BellSouth. The proposed letter states that if the CLP desires to request a true-up, it must inform BellSouth of its decision by two weeks from the date of the letter. The proposed letter concludes that whether or not the CLP chooses to pursue the true-up option, BellSouth will also be sending the CLP an Amendment to the Interconnection Agreement to incorporate the permanent collocation rates. BellSouth's proposed letter requests the CLP to sign and return both copies of the amendment upon receipt.

SPRINT: Sprint noted that it has begun accumulating the information needed to calculate true-up adjustments. Sprint proposed to issue a credit or debit adjustment on bills to CLPs for any differences between revenues collected for services provided under interim prices established in this docket. Sprint commented that these billing adjustments would be issued as soon as practicable after permanent rates are approved by the Commission. Sprint stated that its account management team will endeavor to contact the affected CLPs, including any no longer subject to billing, and will work directly with CLPs to provide updates on the status of any adjustments to include detailed information when necessary. Sprint proposed to offset any refund due a CLP with undisputed balances due Sprint from that CLP.

VERIZON: Verizon filed a one page summary of the steps it proposes to take to perform the true-up. Verizon outlined a three-step process wherein Verizon would review all existing North Carolina intrastate collocation accounts to determine the impact of the Commission's Order and the specific activities that will be performed for each individual account. Verizon's proposed Step 3 consists of subtracting the permanent rate structure from the interim rate structure and (1) if positive, either issue the customer a manual credit for the appropriate amount or apply the credit to any outstanding customer balances; and (2) if negative, issue a bill to the customer for the appropriate amount. Verizon noted that the true-up process would be completed within 120 days of the Commission's order.

COMMENTS ON TRUE-UP PROPOSALS

CLPS: On May 10, 2002, WorldCom, AT&T, and the Southeastern Competitive Carriers Association (SECCA) (collectively the CLPs), filed Comments on the ILECs' true-up proposals. The CLPs noted that the Commission's December 28, 2001 *Order Addressing Collocation Issues* contemplates that collocation rates will decrease in North Carolina as a result of this proceeding.

Thus, the CLPs noted, the Commission ordered BellSouth, Verizon, and Sprint to recalculate rates for floor space, collocation applications, and other elements and service pertaining to collocation. The CLPs observed that Ordering Paragraph Seven stated that the ILECs shall file proposals to **refund** the difference between revenues collected for services provided under interim prices subject to true-up and revenues that would have been collected under the permanent prices established in this docket. The CLPs maintained that nothing is stated in the *Order* concerning credits or payments by CLPs to the ILECs. The CLPs argued that the action contemplated by this language, instead, is that the ILEC not the CLP, refund any difference. The CLPs asserted that no ILEC requested reconsideration of the *Order* on this point. However, the CLPs noted, Verizon's true-up proposal expressly states that it may issue a bill to the customer for the appropriate amount; Sprint proposes to issue a credit or debit adjustment on bills; and BellSouth's letter obliquely proposes that it determine the net amount due; which implies that the CLP could owe it money. The CLPs argued that not only do the ILECs leave the door open to increasing rates as a result of this proceeding, which in itself should be of concern to the Commission, but they now hope to attain what the *Order* does not grant them. The CLPs noted that none of the proposals should be allowed to extract additional funds from CLPs.

The CLPs maintained that BellSouth's proposal otherwise is preferable to those of Verizon or Sprint. The CLPs stated that BellSouth's proposed letter would permit CLPs to verify or dispute the accuracy of BellSouth's data and calculations. The CLPs proposed that BellSouth's letter be amended to provide a list of all of the new rates so that the CLP can verify that BellSouth's information is correct, as well as make a determination whether the CLP, and not only BellSouth, should ask for an amendment to the Interconnection Agreement. The CLPs explained that several new entrants have had incorrect rate information submitted by ILECs in proposed amendments to Interconnection Agreements. The CLPs maintained that with these changes, BellSouth's letter should be applied to the other ILECs as well. The CLPs contended that neither Verizon nor Sprint appears to have provided for any opportunity by CLPs to verify the ILEC's true-up proposal. The CLPs noted that Sprint proposes to issue billing adjustments without prior comment by CLPs, a proposal that, for all its merit in expediting the true-up process, would make it difficult for the CLPs to counteract incorrect information once it is placed in the billing cycle.

REPLY COMMENTS BY THE ILECS

BELLSOUTH: BellSouth filed its reply comments on May 20, 2002. BellSouth maintained that the CLPs raise two specific issues with respect to BellSouth's true-up proposal. First, BellSouth noted, the CLPs argued that BellSouth's proposal, as well as the proposals filed by Verizon and Sprint, are inappropriate because the proposals anticipate that the true-up process may involve refunds/payments by CLPs in instances when a permanent rate established by the Commission exceeds the interim rate paid by the CLP for a particular element or service provided by the ILEC. BellSouth argued that the Commission should reject this argument and reiterate that the true-up process, by its very nature, allows ILECs to offset or credit amounts owed to CLPs with monies that CLPs owe ILECs.

BellSouth stated that the CLPs criticize BellSouth's proposed true-up letter because it implies that the CLP could owe BellSouth money. BellSouth noted that this verbiage is identical to that approved by the Commission for BellSouth's use in its true-up letter in the generic UNE cost proceeding. BellSouth noted that in its *Order Granting Motion Concerning Procedure for True-Up* dated May 26, 2000 in Docket No. P-100, Sub 133d, the Commission ordered BellSouth to send a letter to inform each CLP that it has the option, by a date to be specified in the letter from BellSouth, to request BellSouth to prepare a proposed true-up showing interim rates and charges for each service, the permanent rates and charges for each service, and the net amount due.

BellSouth commented that it is simply disingenuous for the CLPs to complain now that the collocation true-up process must only involve refunds due CLPs with no provision for an ILEC to take credit for monies owed by CLPs to the ILEC.

BellSouth argued that in the generic UNE proceeding, at least 13 other CLPs explicitly recognized that the truing-up of interim rates necessarily involved the possibility that ILECs, as well as CLPs, could recover monies through the true-up process. BellSouth noted that in the CLPs' Proposal for interim line sharing rates dated April 14, 2000, the New Entrants observed: "The interim rates to be established by the Commission in this preliminary stage of the proceeding will be subject to true-up. In the unlikely event of an adjustment to this element of cost [loop cost], the ILECs can recover the difference through the true-up process." BellSouth commented that the CLPs also stated in that proposal: "For purposes of interim rates, no OSS cost should be attributed to line sharing. If, after the hearing on the cost studies to be filed, the Commission determines some cost should be attributed to OSS, a rate true-up will enable the ILECs to recover any differences between the interim rate and the permanent rate."

BellSouth argued that it is simply implausible, as the CLPs suggest here, that the true-up proposal contemplated by the Commission in this collocation proceeding should immunize CLPs from owing ILECs money to the extent that a permanent rate exceeds an interim rate previously approved by the Commission and paid by a CLP. BellSouth concluded that the fundamental principle underlying a rate true-up is to put both parties in the position they would have been in had the ordered rates been in effect.

BellSouth noted that the second issue raised by the CLPs involves their request that BellSouth be required to provide a list of all of the new collocation rates, so that the CLP can verify that BellSouth's information is correct, as well as make a determination whether the CLP, and not only BellSouth, should ask for an amendment to the Interconnection Agreement. BellSouth stated that it is unsure about what the CLPs are requesting with respect to this rate information. BellSouth commented that it will provide all of the new collocation rates as an attachment to amendments to interconnection agreements, because all of those rates would naturally be included as a part of that amendment. BellSouth noted that its proposed true-up letter states that regardless if a CLP desires to participate in the true-up process, its current interconnection agreement needs to be amended to reflect the permanent rates. BellSouth stated that as this appears to be the rate information requested by the CLPs in their Comments, the CLPs appear to have raised an issue that needs no resolution by the Commission.

SPRINT: On May 24, 2002, Sprint filed reply comments addressing the CLPs' comments. Sprint argued that it does not believe that the CLPs' proposal, which amounts not to a true-up, but a refund to CLPs only, was the Commission's intent or that it reflects a reasonable reading of the Commission's *Order Addressing Collocation Issues*. Sprint commented that in the event that the Commission believes a hyper-technical reading of the *Order Addressing Collocation Issues* creates any risk that the position argued by the CLPs could result, Sprint requested that the Commission require that there be a true-up, with refunds to CLPs or ILECs as necessary.

Sprint noted that the CLPs support adoption of BellSouth's proposal with modifications. Sprint maintained that one reason that the CLPs prefer BellSouth's proposal is that, despite Sprint's assurance in its May 6, 2002 filing that it will endeavor to contact the affected CLPs and work directly with them to provide updates on the status of any adjustments to include detail information when necessary, the CLPs apparently do not believe that they would be able to verify or dispute the accuracy of Sprint's data and calculations. Sprint maintained that this is incorrect. Sprint stated that CLPs will be able to verify and dispute the accuracy of Sprint's data and calculations and that Sprint will commit to provide prior notice, and the CLPs may review data reasonably necessary to confirm Sprint's calculation of true-up amounts.

Sprint also argued that true-ups should be made by adjustment on CLP bills, rather than by separate checks, with checks issued only in circumstances when they are necessary (i.e., when a CLP is no longer providing services and; therefore, does not receive regular bills). Sprint asserted that the methodology it has proposed was approved by the Commission for use in the UNE proceeding and should be approved for use in this proceeding. Sprint concluded that the proposal set forth in the CLPs' comments is not necessary and implementation would be unduly burdensome.

VERIZON: On May 22, 2002, Verizon filed its reply comments. Verizon argued that the CLPs' position that true-ups should be a one-way street with money paid to CLPs but ignored for ILECs is patently unfair, self-serving, and without merit. Verizon contended that the CLPs misrepresented the nature of these proceedings and offered a strained reading of the *Order Addressing Collocation Issues*. Verizon commented that nowhere in any of the Commission's orders in this docket or others leading to the establishment of this docket has the Commission stated that collocation rates will decrease in North Carolina as a result of this proceeding. Verizon noted that nor do the orders contemplate such a result or contemplate a one-sided true-up.

Verizon maintained that the Commission's objective with respect to collocation rates is to determine if the ILECs' proposed rates are TELRIC-based. Verizon noted that some rates may increase from the level of the interim rates while others may decrease. Verizon argued that the fact that CLPs were never ordered to present a true-up proposal to the Commission does not mean that they are relieved of their responsibilities to pay ILECs on the basis of the rates the Commission determines are appropriate.

Verizon argued that the CLPs' position is inconsistent with North Carolina General Statute § 62-133(a), which states that the Commission shall fix such rates as shall be fair both to the public utilities and to the consumer. See *State ex rel. Utils. Comm'n v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986)*. Verizon maintained that it is unaware of any decision of the Commission or a court of the state in which one-sided true-ups were applied to utilities in the manner the CLPs propose. To the contrary, Verizon asserted, the proposition that true-ups are not one-way is supported by precedent in other jurisdictions.

Verizon stated that a true-up means that as a result of the Commission's new rate determination, a party is to pay the party owed an amount based upon application of the new rates to the time period during which the owing party paid or received payment pursuant to the old rates. Verizon argued that fairness demands that a true-up of rates be applied and netted against any refunds owed to the CLPs. Verizon concluded that to hold otherwise would result in a windfall for the CLPs as Verizon's customers would have effectively subsidized collocation for CLPs that underpaid Verizon during the interim period.

Verizon noted that with respect to the CLPs' concern about being able to verify Verizon's true-up amounts, Verizon's interconnection agreements with CLPs in North Carolina include audit provisions by which CLPs may obtain any information necessary for verifying Verizon's true-up amounts. Verizon recommended that the CLPs' objections to Verizon's true-up proposal be denied.

DISCUSSION

The Commission agrees with BellSouth that typically the purpose of a true-up mechanism is to put both parties in the position they would have been in had the ordered rates been in effect. Therefore, the Commission agrees with BellSouth, Sprint, and Verizon that the true-up mechanism for purposes of this proceeding should work both ways – if the interim rate for an element was higher than the permanent rate adopted by the Commission for that element, then the CLP would be due a refund and if the interim rate for an element was lower than the permanent rate adopted by the Commission for that element, then the CLP would owe money to the ILEC.

It appears that there is a second issue raised by the CLPs in commenting on the ILECs' true-up proposals concerning how monies are to be paid – by a separate check or by a bill credit. Sprint proposed bill credits for CLPs that are billed by the ILEC and, if a CLP is not currently billed, by a separate check. The Commission believes that bill credits are a reasonable and appropriate approach to the true-up. The Commission believes that as long as the money is returned, a bill credit achieves the objective just as effectively as a separate check. Therefore, the Commission finds it appropriate to allow the ILECs that propose to issue bill credits, when possible, to do so.

The final issue concerns the CLPs' proposal for the Commission to require the ILECs to allow CLPs the opportunity to review a list of the final, approved collocation rates and dispute any calculations to the ILEC. The Commission believes from reviewing the ILECs' true-up proposals that each would allow CLPs to dispute any calculations. However, out of an abundance of caution, the Commission finds it appropriate to instruct the ILECs to provide CLPs with a final, approved list of the collocation rates and allow CLPs to question and/or dispute the ILEC's calculation of the true-up.

Overall, the Commission approves BellSouth's, Sprint's, and Verizon's true-up proposals but specifies that ILECs must provide CLPs with a final, approved list of the collocation rates and allow CLPs to question and/or dispute the ILEC's calculation of the true-up. The Commission further finds it appropriate to require each ILEC to file a written report with the Commission detailing the true-up procedure no later than 90 days after final collocation rates are adopted by the Commission.

CONCLUSIONS

The Commission finds it appropriate to approve BellSouth's, Sprint's, and Verizon's true-up proposals but specify that ILECs must provide CLPs with a final, approved list of the collocation rates and allow CLPs to question and/or dispute the ILEC's calculation of the true-up. The Commission finds it appropriate to require each ILEC to file a written report with the Commission detailing the true-up procedure no later than 90 days after final collocation rates are adopted by the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That the Public Staff is requested to file written comments on the disputed cross-connect rates proposed by BellSouth, Sprint, and Verizon by no later than Wednesday, November 13, 2002.

2. That Sprint should file a cost study and proposed rate for lit fiber cross-connects by no later than Thursday, October 24, 2002. The CLPs and the Public Staff will be allowed the opportunity to file written comments on Sprint's proposed rate by no later than Wednesday, November 13, 2002.

3. That the Public Staff is requested to file written comments on the disputed cable installation rates proposed by BellSouth, Sprint, and Verizon by no later than Wednesday, November 13, 2002.

4. That Sprint and Verizon should refile by no later than Thursday, October 24, 2002 cost studies and proposed rates for simple, minor, intermediate, and major augments. The CLPs and the Public Staff will be allowed the opportunity to file written comments on the rates proposed by no later than Wednesday, November 13, 2002.

5. That BellSouth should file cost studies and proposed rates by no later than Thursday, October 24, 2002 for augments using the four categories of simple, minor, intermediate, and major and reflecting the September 3, 2002 decision made by the Commission on the disputed language in the Standard Offering. The CLPs and the Public Staff will be allowed the opportunity to file written comments on the rates proposed by no later than Wednesday, November 13, 2002.

6. That the Public Staff is requested to file written comments on the disputed adjacent collocation rates proposed by BellSouth by no later than Wednesday, November 13, 2002.

7. That Sprint should file a cost study and proposed rates for adjacent collocation by no later than Thursday, October 24, 2002. The CLPs and the Public Staff will be allowed the opportunity to file written comments on those proposed rates by no later than Wednesday, November 13, 2002.

8. That the Public Staff is requested to file written comments on the disputed adjacent collocation rates proposed by Verizon by no later Wednesday, November 13, 2002.

9. That, since the CLPs have acceded to the ILECs' proposed rates for Premises Space Report, BellSouth's, Sprint's, and Verizon's proposed Premises Space Report rates are hereby adopted.

10. That BellSouth's, Sprint's, and Verizon's true-up proposals are hereby adopted but the ILECs must provide CLPs with a final, approved list of the collocation rates and allow CLPs to question and/or dispute the ILEC's calculation of the true-up.

11. That each ILEC should file a written report with the Commission detailing the true-up procedure no later than 90 days after final collocation rates are adopted by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of September, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

bp092302.01

DOCKET NO. P-100, SUB 133k

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Generic Docket to Address Performance	)	ORDER CONCERNING
Measurements and Enforcement	)	PERFORMANCE MEASUREMENTS
Mechanisms	)	AND ENFORCEMENT MECHANISMS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, June 12, 2001 through June 14, 2001

BEFORE: Commissioner Lorinzo L. Joyner, Presiding; Chair Jo Anne Sanford, and Commissioner Robert V. Owens, Jr.

APPEARANCES:

FOR BELLSOUTH TELECOMMUNICATIONS, INC.:

Edward L. Rankin, III, General Counsel
BellSouth Telecommunications, Inc.
Post Office Box 30188
Charlotte, North Carolina 28230

R. Douglas Lackey
J. Phillip Carver
Attorneys at Law
BellSouth Telecommunications, Inc.
675 West Peachtree Street, N.E., Suite 4300
Atlanta, Georgia 30375

Robert W. Kaylor
Law Office of Robert W. Kaylor, P.A.
225 Hillsborough Street, Suite 480
Raleigh, North Carolina 27603

FOR AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.:

Tim Barber, Attorney at Law
Womble, Carlyle, Sandridge & Rice
3300 One First Union Center
Charlotte, North Carolina 28202

Bill Prescott, Attorney at Law
AT&T Communications of the Southern States, Inc.
1200 Peachtree Street, N.W.
Atlanta, Georgia 30309

Burley B. Mitchell, Jr., Attorney at Law
Womble, Carlyle, Sandridge & Rice
150 Fayetteville Street Mall, Suite 2100
Raleigh, North Carolina 27602

FOR WORLDCOM, INC.:

Ralph McDonald
Bailey & Dixon, L.L.P.
Post Office Box 1351
Raleigh, North Carolina 27602-1351

Dulaney L. O'Roark, III, Attorney at Law
WorldCom, Inc.
Concourse Corporate Center Six
Six Concourse Parkway, Suite 300
Atlanta, Georgia 30328

FOR ACCESS INTEGRATED NETWORK, BIRCH TELECOM, COVAD COMMUNICATIONS, AND MPOWER COMMUNICATIONS:

John A. Doyle, Jr.
Parker, Poe, Adams & Bernstein, L.L.P.
Post Office Box 389
Raleigh, North Carolina 27602

FOR COVAD COMMUNICATIONS:

Catherine F. Boone, Attorney at Law
Covad Communications
10 Glenlake Parkway, Suite 130
Atlanta, Georgia 30328

FOR TIME WARNER TELECOM OF NORTH CAROLINA AND THE NORTH CAROLINA CABLE TELECOMMUNICATIONS ASSOCIATION:

Marcus Trathen
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.
Post Office Box 1800
Raleigh, North Carolina 27602

FOR THE USING AND CONSUMING PUBLIC:

Paul L. Lassiter, Staff Attorney
Public Staff - North Carolina Utilities Commission
4326 Mail Service Center
Raleigh, North Carolina 27699-4326

Kevin Anderson, Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

BY THE COMMISSION: On November 4, 1999, the Commission issued its *Order Keeping Third-Party Testing Docket Open and Instituting a Generic Docket* to examine performance measures and enforcement mechanisms. In its *Order*, the Commission established this docket to address performance measures and enforcement mechanisms and to explore whether incumbent local exchange companies (ILECs) were providing competing local providers/competitive local exchange companies (CLPs/CLECs) nondiscriminatory access to their operations support systems (OSS), as required by the Telecommunications Act of 1996 (TA96 or the Act). The Commission requested that the telecommunications industry, the Public Staff, the Attorney General, and any other interested parties form a Task Force on Performance Measures and Enforcement Mechanisms (Task Force) to address these issues. The Commission directed the Task Force to file a report by February 2, 2000, outlining the specific areas of agreement and disagreement.

On November 9, 1999, AT&T Communications of the Southern States, Inc. (AT&T) filed a response volunteering to act as the Task Force facilitator and to host an organizational meeting in Raleigh. The organizational meeting was held on November 19, 1999, and on December 9, 1999, the Task Force filed its Summary of the organizational meeting.

The Task Force further met on December 13 and December 14, 1999 and conducted a measure-by-measure review of performance measures identified in a matrix of service quality measurements developed by selected members of the Task Force pursuant to a request from the entire membership at its November 9, 1999 organizational meeting. The Task Force also developed a revised work schedule. On January 5, 2000, the Task Force filed its Summary of the December 1999 meeting.

The Task Force subsequently advised the Commission that it was unlikely to be able to produce specific conclusions or recommendations by the February 2, 2000 deadline, and requested extensions of time until March 3, 2000, and then April 3, 2000. The Commission approved these requests.

On April 3, 2000, AT&T, acting on behalf of itself and the other CLPs participating in the Task Force, Verizon South Inc., f/k/a GTE South, Inc. (Verizon), and Carolina Telephone and Telegraph Company and Central Telephone Company (collectively Sprint), filed a Joint Motion to Approve a Stipulation on Interim Performance Measurement Plans for Verizon and Sprint. In the Joint Motion, AT&T asked the Commission to approve in its entirety without any changes the proposed Stipulation. Under the terms of the Stipulation, Verizon and Sprint would provide service to CLPs in North Carolina subject to the service quality measurement plan adopted by the Indiana Utility Regulatory Commission on February 16, 2000, in Indiana Cause No. 41324. The terms of the Stipulation would remain in effect until the Commission ordered permanent or alternative measurement plans for Verizon and Sprint. In return, the CLPs would forbear from further negotiations with Verizon and Sprint in Docket No. P-100, Sub 133k, and focus exclusively on discussions with BellSouth. On April 13, 2000, the Commission issued its *Order Granting Joint Motion to Approve Stipulation on Interim Performance Measurement Plans for Verizon (f/k/a GTE) and Sprint.*

Between April 3, 2000 and July 17, 2000, the Task Force requested, and the Commission granted, four additional Motions for extension of time for the Task Force to file its Final Report with the Commission.

On July 25, 2000, the Task Force filed its Final Report with the Commission. The Task Force explained in its Final Report that its discussions centered on several key subject areas including BellSouth's Service Quality Measurement (SQM) Plan and a variety of additional measurements sought by the CLPs. The Task Force also noted that it discussed a variety of issues, including (1) systems for data validation and auditing; (2) data access and reporting; (3) statistical analysis; and (4) enforcement mechanisms. The Final Report included several Exhibits, as follows:

Exhibit A - BellSouth's September 15, 1999 SQM Plan
Exhibit B - Issue Analysis of BellSouth's SQM Plan
Exhibit C - Additional Service Quality Measures Proposed by the CLPs
Exhibit D - CLP Additional Measures Analysis
Exhibit E - Related Issues Analyses
Exhibit F - Task Force Industry Participants

On August 11, 2000, the Commission issued its *Order Setting Procedural Schedule for Performance Measurements Docket.* The *Order* scheduled an evidentiary hearing to begin on January 8, 2001, set dates for the filing of direct and rebuttal testimony, and directed the Parties to participate in an interim conference on or about December 18, 2000, to try to settle any unresolved issues.

On August 22, 2000, the Commission issued its *Order Regarding Resolution of Issues* wherein, in response to a July 18, 2000 filing by BellSouth and MCI WorldCom, the Commission transferred Issue No. 105 in the BellSouth - MCImetro Access Transmission Services, LLC arbitration proceeding (Docket No. P-474, Sub 10) to this docket. Issue No. 105 concerned the type of performance measurement system BellSouth should be required to provide.

On September 20, 2000, the Commission issued its *Order Concerning Transfer of Additional Issues* wherein, in response to BellSouth's September 11, 2000 Motion to Transfer Issues, the Commission transferred Issue No. 25 and Issue No. 26 in the BellSouth - Sprint

Communications Company, L.P. arbitration proceeding (Docket No. P-294, Sub 23) to this docket. Issue No. 25 concerned the effective date of BellSouth's Voluntary Self-Effectuating Enforcement Mechanism (VSEEM) III remedies proposal and addresses whether VSEEM III remedies should be contingent upon BellSouth obtaining Section 271 authority in North Carolina. Issue No. 26 addressed whether the Commission should incorporate a statistical methodology into the SQM.

On September 22, 2000, BellSouth filed a revised SQM (July 2000 Version) which incorporated revisions it had made to the SQM included as an exhibit to the Task Force's July 25, 2000 Final Report.

In accordance with the Commission's August 11, 2000 *Order* concerning revisions to the SQM, on October 23, 2000 the CLP Coalition[1] filed its comments and a list of additional issues related to the revised SQM submitted by BellSouth. BellSouth also filed a letter on October 23, 2000 stating that it had no issues to submit relative to this SQM.

On October 26, 2000, BellSouth filed a Motion for Continuance of the Performance Measurements Hearing wherein BellSouth requested a two-month continuance of the hearing date until BellSouth refiled a version of the SQM that reflected changes that may be made as a result of certain proceedings in Georgia and Louisiana. On October 31, 2000, the Commission issued an *Order Continuing Hearing* wherein the Commission approved BellSouth's request and postponed the January 8, 2001 hearing date together with the associated pre-hearing filing requirements for approximately two months, pending further order of the Commission.

On January 17, 2001, Sprint filed a Request asking the Commission to slightly modify the Stipulation approved on April 13, 2000. Sprint asked that the Commission defer the scheduled date for it to begin reporting performance measurement results from the first quarter of 2001 until 90 days after five certified CLPs requested individual performance measurement reporting. On February 1, 2001, the Commission issued its *Order Granting, In Part, Sprint's Request for Modification to the Implementation Schedule* wherein the Commission allowed Sprint to defer its Commission reporting of the Sprint-specific measurement plan until 90 days after three certified CLPs requested individual performance measurement reporting.

On February 22, 2001, BellSouth filed its Motion to Set Hearing and Submission of Revised SQM and Matrix. BellSouth updated its SQM to partially conform to the Georgia Public Service Commission's (PSC's) January 16, 2001 *Order* in Docket No. 7892-U. BellSouth filed its new SQM with an issue date of February 21, 2001. BellSouth petitioned the Commission to schedule the evidentiary hearing for May 1, 2001 through May 4, 2001 and to establish dates for the filing of testimony.

On February 28, 2001, the CLP Coalition filed its Response to BellSouth's Motion, contending that BellSouth's expedited schedule would not afford the CLPs adequate time to compare the new North Carolina SQM with the previous North Carolina SQM and the Georgia

[1] The CLP Coalition includes Access Integrated Networks, Inc., Birch Telecom of the South, Inc., Covad Communications Company, Mpower Communications, Inc., WorldCom, Inc., MCImetro Access Communications Services, LLC and AT&T Communications of the Southern States, Inc.

SQM. The CLP Coalition proposed that the Commission set alternative hearing dates of June 12, 2001 through June 15, 2001 and adjust the testimony filing dates consistent with this schedule. On March 2, 2001, BellSouth filed its Reply to the CLP Coalition's Response wherein it proposed a new procedural schedule. On March 6, 2001, the CLP Coalition objected to BellSouth's proposed revised schedule and requested that the Commission adopt the schedule it propounded in its February 28, 2001 Response.

On March 7, 2001, the Commission issued its *Order Rescheduling Hearing* wherein the Commission approved the CLP Coalition's proposed procedural schedule and ordered the hearing to begin on June 12, 2001.

On April 23, 2001, the CLP Coalition filed the direct testimony of Robert Bell, Cheryl Bursh, Rodney Page, Tad Jerret Sauder, Thomas E. Allen, and Nancy Bingham, and BellSouth filed the direct testimony of Edward J. Mulrow, Ph.D., and Alphonso J. Varner. With an extension of time from the Commission, WorldCom, Inc. (WorldCom) filed the direct testimony of Karen Kinard on April 27, 2001. On May 7, 2001, the CLP Coalition filed the revised testimony (pages 6 and 17) to witness Thomas E. Allen's direct testimony.

On May 16, 2001, the CLP Coalition filed a Motion to Strike BellSouth's April 23, 2001 SQM which was attached to BellSouth witness Varner's direct testimony as Exhibit AJV-1. On May 22, 2001, BellSouth filed its Response to the CLP Coalition's Motion to Strike. On May 25, 2001, the Commission issued its *Order Denying Motion to Strike but Allowing Rebuttal Testimony*. The CLPs were allowed to file rebuttal testimony regarding the April 23, 2001 SQM by June 4, 2001.

On May 21, 2001, the CLP Coalition filed the rebuttal testimony of Tad Jerret Sauder, and Karen Kinard. Further, on May 22, 2001, the CLP Coalition filed the rebuttal testimony of Robert M. Bell and Cheryl Bursh. On May 21, 2001, BellSouth filed the rebuttal testimony of Edward J. Mulrow, Ph.D., Ronald M. Pate, William E. Taylor, Ph. D., and Alphonso J. Varner. On May 30, 2001, at the request of the Commission Staff, BellSouth filed color copies of Varner Exhibits AJV-2 and AJV-3. On June 4, 2001, the CLP Coalition filed the rebuttal testimony of Thomas E. Allen concerning BellSouth's April 23, 2001 SQM. Also on June 4, 2001, the CLP Coalition filed rebuttal comments on BellSouth's April 23, 2001 SQM.

As required in the Commission's March 7, 2001 *Order Rescheduling Hearing*, on June 5, 2001 counsel for the CLP Coalition and BellSouth conducted an Interim Conference in an effort to reach agreement on outstanding issues. On June 8, 2001, BellSouth filed a Report on the Interim Conference wherein BellSouth reported that the Parties had reached agreement on three specific issues during the Interim Conference.

On June 8, 2001, the Commission issued its *Pre-Hearing Order*.

On June 11, 2001, WorldCom filed a copy of an affidavit of Sherry Lichtenberg, which had been submitted to the Louisiana PSC on June 8, 2001. The affidavit detailed problems that WorldCom had encountered with BellSouth during its launch of residential service in Georgia.

On June 14, 2001, BellSouth filed a late-filed exhibit of witness Varner (Varner Late Filed Exhibit No. 1).

The hearing was held as rescheduled on June 12, 2001 through June 14, 2001.

On June 25, 2001, pursuant to a request from the Presiding Commissioner during the hearing, the CLP Coalition filed its Statement of Position on Disaggregation.

After the Commission granted the Parties two separate Motions for extension of time, on September 17, 2001, BellSouth filed its Post-Hearing Brief and Proposed Order. On September 18, 2001, the CLP Coalition filed its Post-Hearing Brief and Proposed Order and the Public Staff filed its Proposed Order in the docket.

On October 3, 2001, the CLP Coalition filed its Motion to Take Judicial Notice of the Florida Public Service Commission's September 10, 2001 *Final Order Requiring Performance Assessment Plan* (PSC-01-1819-FOF-TP - Docket No. 000121-TP).

On October 5, 2001, BellSouth filed a copy of its September 25, 2001 Motion for Reconsideration and Clarification of the Florida Public Service Commission's September 10, 2001 *Order*. BellSouth stated that while it understands that the Commission may take judicial notice of the *Florida Order* and give it the weight it deems appropriate, BellSouth also believes it is appropriate for the Commission to know that BellSouth filed its Motion for Reconsideration and Clarification in response to the *Order*.

On December 14, 2001, the Florida Commission issued its *Order Denying BellSouth's Motion for Reconsideration, Granting Motion for Clarification and Denying Joint Motion for Clarification*. The Florida Commission ordered that, "BellSouth Telecommunications, Inc.'s Motion for Reconsideration is hereby denied."

On March 20, 2002, BellSouth filed a letter with the Commission stating that it will voluntarily agree to include the Service Order Accuracy measure in the permanent performance measures plan as well as the SEEM plan proposed by BellSouth in this docket. BellSouth explained that during performance measures workshops conducted by the Georgia Public Service Commission, the CLP Coalition proposed, and BellSouth did not object to, including Measure P-13 - Service Order Accuracy as a measure under BellSouth's SEEM Plan. BellSouth stated that the measurement is not currently included in the set of permanent performance measurements that BellSouth has asked the Commission to approve in this proceeding nor is it a measurement that is included in the SEEM plan that BellSouth is proposing in this docket. BellSouth stated that it is agreeing voluntarily to include the proposed Service Order Accuracy measure in the proposed permanent SQM plan and SEEM plan until such time as the Commission adopts a revised Service Order Accuracy measure, the details of which are currently being discussed by the industry. BellSouth stated that upon adoption by the Commission, the new Service Order Accuracy measure will be included in the SEEM plan, and BellSouth's agreement to pay Tier 2 payments under the existing Service Order Accuracy measure will terminate.

A glossary of the acronyms referenced in this Order is attached hereto as Appendix A.

WHEREUPON, based upon careful consideration of the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. **(R-DVA-1, R-DVA-2, R-DVA-3, R-DVA-4, R-DVA-5, AND R-DVA-6)** The issue of whether, in confirming performance measures are accurate and complete, the auditor should manually compile data into the form reported by the relevant ILEC and confirm that the manually reported results match equivalent automated reports generated by the ILECs will not be addressed as a part of this proceeding, but addressed in the scope of the audit, if necessary. The following conditions for annual third-party audits of BellSouth's performance measures plan and self-enforcing penalties plan should be implemented:

(a) Five comprehensive annual audits of the current year aggregate level reports for both BellSouth and the CLP(s) will be conducted under the supervision of the Commission with the first audit to commence no earlier than one year following the date that a final order establishing an SQM plan and Self-Effectuating Enforcement Mechanism (SEEM) plan is issued in this docket. The starting date for the second and subsequent audits will be set by future order of the Commission. The audits should be at a state level. If there are some processes which can only be audited at the regional level, then BellSouth can make a threshold showing why they must be audited on a regional basis. Since the audits are an integral part of a performance measurement plan designed to ensure BellSouth's compliance with the Act, BellSouth will be responsible for the full cost of these audits.

(b) BellSouth and the CLPs are directed to file recommendations concerning the scope and conduct of the initial audit no later than ten months following the issuance of a final order in this docket. BellSouth, the CLPs, and the Public Staff are directed to file responses to these proposals within 30 days after filing.

(c) BellSouth and the CLPs will select the third-party auditor with the approval of the Commission. The Commission will then issue an order outlining the scope and conduct of the initial audit based upon recommendations from BellSouth, the CLPs, and the Public Staff.

(d) No later than fifteen days after the Commission issues the order outlining the scope and conduct of the audit, BellSouth will file a copy of the proposed contract with the third-party auditor for Commission approval. BellSouth and the third-party auditor will be signatories to this contract.

The CLPs' proposal for "mini-audits" is unworkable and is disapproved, primarily because the potential inordinate burden which could be imposed on BellSouth. However, if any CLP has serious concerns about the performance data and SQM reports, it can request a third-party audit on the measures that it is challenging. BellSouth and the CLP will initially share the cost for such an audit equally, with the Commission having the option to reconsider the ultimate assignment of the costs.

BellSouth should revise Section C-2 of Appendix C of the North Carolina SQM consistent with these changes and to submit a revised copy to the Commission by no later than June 21, 2002.

2. **(R-DAR-1)** BellSouth is required:

(a) To provide the CLPs with access to all raw data used to create performance reports, including the raw data, to the extent it exists, that BellSouth uses or otherwise relies on to calculate its retail analog performance statistics;

(b) To provide the data required in Item No. 2(a) above via the PMAP in a format or formats that can be readily downloaded, understood, and manipulated by each CLP for purposes of verifying its reported results;

(c) To allow the Public Staff and the Commission Staff ongoing access, via the PMAP, to all aggregate CLP performance and enforcement reports and all raw data that were used in preparing these reports;

(d) To make a comprehensive, clear, complete, detailed user's manual available, via the PMAP, with easily accessible instructions, showing how the raw data were manipulated to produce the reported results to allow for the duplication/verification of the reported statistics from the raw data;

(e) To identify and provide easy access to a BellSouth point of contact with whom CLPs can confer to resolve questions about accessing the raw data, including, but not limited to, explanations of the fields, parameters, code definitions, file column purposes, and headings, and to otherwise provide timely assistance to CLP representatives who have questions concerning the calculation procedures;

(f) To provide all raw data and performance and enforcement reports for each monthly reporting period in final form on the PMAP website by no later than 12:01 a.m. on the last day of the month first following the month in which the reported activity occurs;

(g) To work with the CLPs to make the PMAP website easier to use and more responsive;

(h) To retain the raw data on which the performance measures are based for a period of 18 months and to retain the monthly reports produced in the PMAP for a period of three years; and

(i) To be responsible for correcting errors for a period of 12 months after the date the report is no longer accessible to the CLP, i.e., for a period of 12 months after the date the report is removed from the website.

3. **(R-STA-1, R-STA-2, R-STA-3, R-STA-4, R-STA-5, AND R-STA-6)** The truncated Z test statistic is appropriate to evaluate parity for means test where transaction level data is available and a BellSouth retail analog exists. The transformation methodology should be used to calculate Z test statistics for proportion and rate measures for both Tier 1 and Tier 2 testing. Further, permutation analysis should be used to calculate Z test statistics for small sample sizes of 30 or less.

A 0.5 delta is appropriate for Tier 1 testing and a 0.35 delta is appropriate for Tier 2 testing. Such delta values should be subject to review after one year of operating experience is gained. After that time, Parties may prepare and present any arguments to change the delta values based on actual operating experience in North Carolina. In addition, given the particular importance of the delta value issue, the Commission is willing to revisit the delta value issue after six months of operating experience if a Party can make an adequate showing that a change in the delta values is appropriate.

The statistical approach recommended by BellSouth should be used to adjust a particular benchmark performance measure when the number of transactions is small.

4. **(R-ENF-1 and R-ENF-7)** BellSouth's transactions-based approach, which places a separate economic value on each type of service being measured, is appropriate. Tier 2 penalties should be used to determine a pattern of persistent disparate treatment to the CLP industry, and therefore, should be based on a three-month rolling average when performance continues at a substandard level for three consecutive months.

5. **(R-ENF-2 AND R-ENF-3)** An absolute cap on remedy payments is appropriate. The appropriate percentage cap to be included in the SEEM is an annual cap of 36% of BellSouth's annual North Carolina net operating revenues, based upon the most recently reported ARMIS data.

6. **(R-ENF-4 AND R-ENF-17)** The penalty plan should not include the CLPs' Tier 2, market penetration adjustment.

7. **(R-ENF-5)** The remedy plan set out herein is a reasonable one, and BellSouth is required to adopt it.

8. **(R-ENF-6)** Conclusions on how the remedy plan should be administered are addressed elsewhere herein.

9. **(R-ENF-8)** BellSouth's proposal to deal with chronic performance failures for the CLP industry through the Tier 2 penalties in its SEEM proposal, based on a three-month rolling average, using the affected volumes averaged and multiplied by the appropriate Tier 2 penalty per item to arrive at a remedy amount, is reasonable and appropriate.

10. **(R-ENF-9)** The severity approach proposed by the CLPs for Tier 1 remedy payments is rejected. The Tier 1 remedy calculations from BellSouth's proposed SEEM are appropriate.

11. **(R-ENF-10)** BellSouth shall disaggregate based on product as proposed by the CLP Coalition for measures O-3 and O-4, and BellSouth shall disaggregate based on both line sharing and line splitting, where appropriate, in its SQM. The Commission declines at this time to require BellSouth to disaggregate based on the other nine categories proposed by the CLP Coalition. However, the Commission hereby requires BellSouth to provide data based on geographic disaggregation for the three months preceding the first Commission review of BellSouth's performance measures plan to enable the Parties, including the Public Staff, and the Commission to determine whether this type of disaggregation information would be beneficial and useful on a going-forward basis.

12. **(R-RNF-11, R-ENF-12, AND R-ENF-13)** The same level of disaggregation should be used to determine both compliance and remedy payments.

13. **(R-ENF-14)** Penalty payments should apply for late, incomplete, or erroneous reports and raw data. BellSouth will be subjected to a $1,000 penalty for each full day following a monthly report deadline that it fails to provide either (1) the complete, correct monthly aggregate performance report; (2) the complete, correct monthly aggregate enforcement report; or (3) the complete, correct set of aggregate raw data, up to a penalty of $3,000 per day. Such penalty shall be payable to the Commission.

14. **(R-ENF-15)** Only those measures that are customer-impacting to CLPs should be included in the BellSouth remedy plan. However, the Commission finds that there is inadequate evidence in the record for the Commission to determine exactly which measures should be included in the remedy plan. The Commission hereby requires BellSouth, the CLP Coalition, and the Public Staff to negotiate which measures should be included in BellSouth's remedy plan. The Commission instructs the Parties to closely review the measures that were included and excluded in the remedy plans adopted in Texas, New York, Georgia, Louisiana, Oklahoma, and Kansas and to use this review to aid in the negotiations. The Commission instructs the Parties to complete this negotiation and submit a joint report on the measures the Parties negotiated to include in the BellSouth remedy plan by no later than July 22, 2002. Finally, the Commission concludes that until this issue is negotiated, the SQM should include BellSouth's proposal on this issue.

15. **(R-ENF-16)** BellSouth should adopt a Tier 3 penalty whereby it would voluntarily suspend additional marketing and sales on long distance services if it fails to meet a specific number of the Tier 3 submetrics for three consecutive months.

16. **(R-ENF-18 AND R-ENF 19)** There is insufficient evidence in the record to determine which measures, if any, in the BellSouth SQM are duplicative or correlated with other measures. The Commission instructs BellSouth, the CLP Coalition, and the Public Staff to continue to work on this issue through the negotiation process and file a report with the Commission on the issue of duplicative or correlated measures no later than July 22, 2002. Finally, the Commission concludes that until this issue is negotiated, the SQM should include BellSouth's proposal on this issue.

17. **(R-ENF-20)** Remedies should apply to performance measures that reflect manual and partially mechanized processing.

18. **(R-ENF-21)** The remedy plan adopted herein shall become effective on June 21, 2002.

19. **(R-ENF-22)** The same performance standards shall be applied in the remedy plan and the performance measurement plan.

20. **(R-MSC-1)** BellSouth and the CLP Coalition shall revise the document containing the Florida Staff proposal concerning periodic performance reviews consistent with the Public Staff's recommended modifications and file a copy with the Commission no later than June 21, 2002, with the exception that reviews will be held annually rather than semiannually.

21. **(R-MSC-2, R-MSC-3, AND R-MSC-4)** BellSouth should file separate monthly reports with the Commission and the Public Staff on the performance it provides to: (1) BellSouth Telecommunications, Inc.; (2) BellSouth BSE, Inc.; and (3) CLPs in the aggregate, excluding data and results for BellSouth Telecommunications, Inc. and BellSouth BSE, Inc. Furthermore, the requirement to report performance results of its affiliates is limited to only the affiliate(s) which provide local services. The Commission declines to require BellSouth to report performance results for its other affiliates.

22. The appropriate retail analogs and benchmarks are as follows:

Measure from BellSouth's April 23, 2001 SQM	Commission Approved Analog or Benchmark
OSS-1	Parity
PO-1	95% within 3 business days
PO-2	90% within 5 minutes
O-1	95% within 30 minutes for both EDI and TAG

Measure from BellSouth's April 23, 2001 SQM	Commission Approved Analog or Benchmark
O-3 O-4	95% residence resale 90% business resale 85% UNE 85% LNP
O-8	Mechanized - 97% within 1 hour Partially Mechanized - 95% within 12 hours Non-Mechanized - 95% within 24 hours
O-9	Mechanized - 97% within 1 hour Partially Mechanized - 95% within 12 hours Non-Mechanized - 95% within 24 hours
O-10	95% returned within 5 business days
O-11	95% returned
O-12	90% or more of calls answered within 20 seconds
O-14	Mechanized - 97% within 1 hour Partially Mechanized - 95% within 12 hours Non-Mechanized - 95% within 24 hours
O-15	Mechanized - 95% within 1 hour Partially Mechanized - 95% within 12 hours Non-Mechanized - 95% within 24 hours
P-4	UNE xDSL loops - 7 days without conditioning and 14 days with conditioning.
P-6	95% ≤ 15 minutes
P-6A	95% within + or - 15 minutes of scheduled start time For SL1 and SL2 IDLC - 95% within 4 hour window
P-6B	Diagnostic

Measure from BellSouth's April 23, 2001 SQM	Commission Approved Analog or Benchmark
P-6C	≤ 5%
P-7	95% of lines tested successfully pass cooperative testing
M&R-6	90% or more of calls answered within 20 seconds
OS-1	90% or more of calls answered within 10 seconds
DA-1	85% or more of calls answered within 10 seconds
TGP-1 and TGP-2	Any 2 hour period in 24 hours where CLP blockage exceeds BellSouth blockage by more than 0.5% using trunk groups 1, 3, 4, 5, 10, 16 for CLPs and 9 for BellSouth
C-1	1-5 applications - 15 calendar days 6-10 applications - 20 calendar days 11-15 applications - 25 calendar days 16-20 applications - 30 calendar days 21-25 applications - 35 calendar days, etc...
C-2	Physical cageless - 60 calendar days from application date Physical caged - 90 calendar days from application date
C-3	≥ 95% on time
CM-1	95% ≥ 30 days of release
CM-2	≤ 8 days
CM-3	95% ≥ 30 days if new features coding is required 95% ≥ 5 days for documentation defects, corrections, or clarifications
CM-4	≤ 8 days

23. In regard to the CLP Coalition's proposed additional metrics and additional metric amendments or clarifications, as per the CLP Coalition's Proposed Order, and in regard to the Public Staff's proposed modifications to BellSouth's answer-time related metrics: O-12 and M&R-6, BellSouth is required to include in its SQM Plan the additional measures and modifications to its existing measures as follows:

OP-104 Percent Order Accuracy

BellSouth should incorporate Measure No. P-13, the Service Order Accuracy metric, into its current North Carolina SQM Plan and its SEEM Plan, along with all of the same requirements that apply to the metric in the Georgia and Florida SQMs, including the mandated business rules, exclusions, calculation procedures, disaggregation levels, and benchmarks, except to the extent that any of those provisions would be inapplicable to BellSouth's North Carolina operations.

OP-105 Percent Completion/Attempts Without A Notice or With Less Than 24 Hours Notice

BellSouth should incorporate the Percent Completion/Attempts Without a Notice or With Less Than 24 Hours Notice metric into its current North Carolina SQM Plan, along with all of the same requirements that apply to the metric in the Georgia and Florida SQMs, including the mandated business rules, exclusions, calculation procedures, disaggregation levels, and analogs/benchmark, except to the extent that any of those provisions would be inapplicable to BellSouth's North Carolina operations.

OP-120 Percent Completion of Timely Loop Modification/Conditioning on xDSL Loops

BellSouth should not incorporate the Percent Completion of Timely Loop Modification/Conditioning on xDSL Loops metric into its current North Carolina SQM Plan. Further, in consideration that BellSouth has implemented changes to capture the time for loop conditioning, which were not reflected in its April 23, 2001 SQM Plan, the revised SQM to be submitted by BellSouth pursuant to a final order in this docket should reflect the change in the business rules for the Average Completion Interval (OCI) & Order Completion Interval Distribution metric (Measure No. P-4).

OP-105 Percent Billing Errors Corrected in X Days

BellSouth should incorporate the Percent Billing Errors Corrected in X Days metric into its current North Carolina SQM Plan, along with all of the same requirements that apply to the metric in the Florida SQM, including the mandated business rules, exclusions, calculation procedures, disaggregation levels, and analogs/benchmarks/diagnostics, except to the extent that any of those provisions would be inapplicable to BellSouth's North Carolina operations.

OP-109 Percent of Hot Cuts Not Working as Initially Provisioned

BellSouth should not incorporate the Percent of Hot Cuts Not Working as Initially Provisioned metric into its current North Carolina SQM Plan. However, BellSouth should include a clarifying statement in its definition for its proposed Measure No. P-6C, Percent Provisioning Troubles Within Seven days of a Completed Service Order, stating that "CLPs can report a trouble as soon as the service order is completed." Additionally, BellSouth should take appropriate care during each hot cut process to ensure that service to new CLP customers is working properly before the order is logged as completed.

OP- 119 Percent Successful xDSL Service Testing

BellSouth should not incorporate the Percent Successful xDSL Service Testing metric into its current North Carolina SQM Plan. However, BellSouth should be required to modify its definition for Measure No. P-7, Cooperative Acceptance Testing - Percent of xDSL Loops Tested to include the following statement: "A loop will be considered successfully cooperatively tested when both the CLP and ILEC representatives agree that the loop has passed the cooperative testing". Additionally, the Phrase, "95% of Lines Tested" in the SEEM Analog/Benchmark Section of Measure No. P-7 should be modified to read "95% of Lines Tested Successfully Pass Cooperative Testing".

CM-101 Percent Change Management Notices Sent On Time
CM-102 Percent Change Management Final Documentation Sent on Time
CM-103 Average Delay Days for Notices
CM-104 Average Delay Days for Documentation
CM-105 Percent ILEC vs. CLP Changes Made

BellSouth has already incorporated Measure Nos. CM-101, CM-102, CM-103, and CM-104 into its current BellSouth North Carolina SQM. BellSouth should not incorporate Measure No. CM-105, Percent ILEC vs. CLP Changes Made, as proposed by the CLPs into its current North Carolina SQM Plan. However, to the extent, in the future, the Georgia Commission adopts a change control implementation fairness metric(s) based upon its six-month review of performance measurements, the CLPs may, thereafter, file such metric(s) in North Carolina, for further consideration by the Commission.

MI-101 Percent Response Commitments Met On Time

> BellSouth should not incorporate the Percent Response Commitments Met On Time metric into its current North Carolina SQM Plan. However, to the extent, in the future, the Georgia Commission adopts a response commitment metric, based upon its six-month review of performance measurements, the CLPs may, thereafter, file such metric in North Carolina, for further consideration by the Commission.

O-12 Speed of Answer in Ordering Center and M&R-6 Average Answer Time - Repair Centers

> BellSouth should ensure that the number of abandoned calls during the reporting period is included in the call counts for Measure No. O-12 and Measure No. M&R-6, and that the time calls spend in queues prior to abandonment during the reporting period is also appropriately included in the answer time calculations. BellSouth should also revise the business rules and calculation sections for these two metrics to make it absolutely clear that the total times in the queue and total call counts reflect BellSouth's results for both answered calls and abandoned calls.
>
> Further, BellSouth should count, on either a statewide or a regional basis, the number and overall percentage of calls to its Ordering Centers and Repair Centers that are abandoned while in queue during each reporting period. BellSouth is required to provide these figures to the Commission for the reporting period beginning immediately after the issuance of a final order in this docket and continuing until further notice.

24. In regard to the business rules and exclusions incorporated into the various performance measurements, BellSouth is required to include in its SQM Plan the additional modifications/clarifications to its existing measures as follows:

- ***OPERATIONS SUPPORT SYSTEMS MEASURES:***

OSS-1 Average Response Time and Response Interval (Pre-Ordering/Ordering)

Syntactically incorrect queries should be excluded from the measure, in order to show how long it takes to return valid query information to the CLP.

OSS-2 Interface Availability (Pre-Ordering/Ordering)

BellSouth should post its own scheduled hours of OSS availability on its website.

OSS-3 Interface Availability (Maintenance & Repair)

BellSouth should post its own scheduled hours of OSS availability on its website.

- *ORDERING MEASURES:*

O-1 Acknowledgment Message Timeliness

BellSouth should modify the business rules to include an additional statement, which explicitly states that if the CLP desires a CLP-specific acknowledgment, then the CLP, itself, should submit the LSR rather than using a third party.

O-8 Reject Interval
O-9 FOC Timeliness

BellSouth should revise its business rules, wherever applicable, to require that any necessary facilities checks for a LSR be completed prior to issuance of the FOC.

O-11 FOC and Reject Response Completeness

BellSouth should modify its measure to reflect the inclusion of nonmechanized LSRs, as it has stated it was going to do.

- *PROVISIONING MEASURES:*

P-6B Coordinated Customer Conversions - Average Recovery Time

BellSouth should clarify this measure to reflect that the exclusion of CLP-caused reasons and end-user caused reasons need to be verified with the CLP.

P-7 Cooperative Acceptance Testing - % of xDSL Loops Tested

BellSouth should capture the number of CLP-caused failures monthly in the raw data.

- *MAINTENANCE & REPAIR MEASURE:*

M&R-3 Maintenance Average Duration

BellSouth should include additional language in its business rules for this measure explaining a correct repair request and how a CLP is informed if the trouble is not correct when submitted.

- *COLLOCATION MEASURE:*

C-2 Collocation Average Arrangement Time (C-2 in 4/23/01 SQM)

BellSouth should incorporate appropriate language into this measure to reflect that it may not exclude time required to obtain building permits from the provisioning intervals, i.e., time to obtain building permits should not extend the collocation provisioning interval, consistent with the Commission decision, in this regard, in the generic collocation proceeding, Docket No. P-100, Sub 133j.

- *CHANGE MANAGEMENT MEASURES:*

CM-3 Timeliness of Documents Associated with Change

BellSouth's exclusion language as follows, "[d]ocumentation for release dates that slip less than 30 days for reasons outside BellSouth control, such as changes due to Regulatory mandate or CLEC request", is too open-ended. The Commission encourages the CLP Coalition and BellSouth to negotiate mutually agreeable language for this exclusion component that more explicitly addresses the "reasons outside BellSouth control."

CM-5 Notification of CLEC Interface Outages

BellSouth should explain how it verifies an outage and the interval between first notice of outage and verification.

- *OTHER RELATED MATTER:*

The SQM Plan needs to reflect BellSouth's up-to-date operating days and hours in order to prevent misleading performance measurement results and to alleviate other possible negative consequences that may be caused by BellSouth's unilateral change of its operating days and hours. BellSouth should clearly designate, in the business rules of any metric in the SQM Plan whose calculation relies on business days or business hours, the specific operating days and/or operating hours that are intended. Further, BellSouth should provide the Commission with at least 30 calendar days prior notice of any planned changes in the business days or business hours designated in the SQM Plan and should likewise notify the CLPs by posting such notice on BellSouth's relevant website; BellSouth should incorporate this change into the SQM Plan to be filed pursuant to the final Commission order in this docket; and BellSouth should regularly update the SQM Plan to reflect such future changes.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

R-DVA-1: Whether in confirming performance measures are accurate and complete, the auditor should manually compile data into the form reported by the relevant ILEC and confirm that the manually reported results match equivalent automated reports generated by the ILEC?

R-DVA-2: Whether a regional audit would be appropriate and, if so, under what conditions?

R-DVA-3: If a regional audit is performed, how should measures or issues unique to North Carolina be dealt with in such an audit?

R-DVA-4: How should an auditor be selected?

R-DVA-5: How should the costs of audits be funded?

R-DVA-6: Should CLPs be allowed to request interim audits (or mini-audits) of selected measures and, if so, under what circumstances?

POSITIONS OF PARTIES

BELLSOUTH: (R-DVA-1 through R-DVA-6) The ultimate Plan auditor should have the discretion to determine how to ensure the accuracy and completeness of BellSouth's measures. Regional audits of BellSouth's Plan are appropriate. BellSouth and the CLPs should split the costs of annual audits. CLPs should not be allowed to request interim or mini-audits of the Plan.

CLP COALITION: (R-DVA-1 through R-DVA-6) Comprehensive annual audits of reporting methodology and accuracy of data (particularly employee use of codes that could lead to exclusion of data from metrics) should be required. In addition, BellSouth's adherence to metric change control policies should be reviewed because BellSouth's failure to follow through on such policies would thwart the replication of past metric reports. The audits should cover all reporting procedures and reportable data. Audits would include all systems, processes, and procedures associated with the production and reporting of performance measurement results. The third-party auditor should be jointly selected by BellSouth and the CLPs. If the parties cannot agree on the auditor, the Commission should determine the auditor. Costs for annual audits should be borne by BellSouth. Mini audits also should be permitted in appropriate circumstances.

PUBLIC STAFF: (DVA-1 through R-DVA-6) The Commission should decline to adopt the CLP Coalition's proposal for mini-audits. The Commission should require comprehensive annual third-party audits of BellSouth's performances measures plan and self-enforcing penalties plan, subject to the conditions proposed by the Public Staff specified herein.

DISCUSSION

Issues R-DVA-1 through R-DVA-6 are all related to audits of BellSouth's performance measures plan and self-enforcing penalties plan.

R-DVA-1: BellSouth witness Varner testified that this issue (whether in confirming performance measures are accurate and complete, the auditor should manually compile data into the form reported by the relevant ILEC and confirm that the manually reported results match equivalent automated reports generated by the ILEC) does not need to be addressed as part of this proceeding for two reasons. First, witness Varner testified, the manner in which the audit is conducted should be an integral part of the scope of the audit, and, second, that many of BellSouth's reports are compiled from a snapshot of data extracted once a month. Witness Varner stated that the auditor would need to have some discretion in confirming the accuracy of BellSouth's reports by manually compiling data that may have been extracted from a slightly different snapshot than the snapshot used by BellSouth to mechanically generate the same report. In its Proposed Order, BellSouth contended that the auditor should have the discretion to determine how best to ensure the accuracy and completeness of BellSouth's measures. BellSouth stated that the auditor may elect to compile data manually, but this process should not be imposed upon the auditor, either by Commission order or otherwise. In addition, BellSouth pointed out that although this issue was included in the Task Force Final Report at the request of the CLPs, no CLP witness filed testimony on this issue.

R-DVA-2; R-DVA-3; R-DVA-4: BellSouth witness Varner testified that, "If requested by a Public Service Commission or by a CLEC. . . BellSouth will agree to undergo a comprehensive audit of the current year aggregate level reports for both BellSouth and the CLEC(s) for each of the next five years (2001-2005), to be conducted by an independent third party." BellSouth proposed that the independent third-party auditor be selected with input from BellSouth, the Commission, if applicable, and the CLPs. Witness Varner further testified that the scope of the audit should be jointly determined by BellSouth, the CLPs, and the Commission. BellSouth noted that BellSouth and the CLP Coalition appear to generally agree on many questions relating to third-party audits. BellSouth contended that the only real dispute (other than who should pay for audits) is whether the audits should be regional. BellSouth argued that audits should be conducted regionally since many of the processes and programs are the same from state to state.

R-DVA-5: BellSouth argued that the cost of comprehensive annual audits should be borne 50% by BellSouth and 50% by the CLPs. BellSouth contended that this approach is appropriate because CLPs can effectively define the scope of the audit, which determine the audit cost. BellSouth further stated that to the extent that the CLPs are required to pay 50% of the audit cost, this total cost will be divided among the various CLPs, which will result in each paying a relatively small amount.

R-DVA-6: BellSouth contended that a CLP should not have the right to require BellSouth to undergo an individual audit by a third party (i.e., a mini-audit) whenever it has reason to believe that the data collected for the measure is flawed or that the report criteria is not being adhered to. BellSouth witness Varner testified that, "BellSouth provides the CLPs with the raw data underlying many of the BellSouth Service Quality Measurement reports as well as the user manual on how to manipulate the data into reports." BellSouth contended that this raw data can be used to validate the results that appear in the BellSouth SQM. BellSouth witness Varner further testified that a conservative estimate based on comprehensive audits in Georgia and Florida is that the annual comprehensive audit will take six months to complete in each given year which leaves six months each year to conduct all of the mini-audits requested by the CLPs.

Therefore, BellSouth argued, if each of the 60 CLPs operating in North Carolina demanded an audit of a submeasure three times in each year, BellSouth would be responsible for conducting 180 CLP-specific audits each year, just in North Carolina. BellSouth stated that if this demand were extended to BellSouth's entire region, up to three mini-audits per year would have to be done for each of the 800 CLPs that are certified in BellSouth's region.

R-DVA-1: The CLP Coalition did not address this issue specifically.

R-DVA-2, R-DVA-3, R-DVA-4: In its Proposed Order, the CLP Coalition contended that the audits are an integral part of a performance measurement plan designed to ensure BellSouth's compliance with the Act. The CLP Coalition stated that to ensure that BellSouth's reporting is accurate and appropriately triggers remedies designed to curb its incentive to discriminate, comprehensive annual audits are critical, and a comprehensive audit should be conducted every 12 months. The CLP Coalition contended that comprehensive independent third-party audits of the data and reports for both BellSouth and the CLPs should be conducted for the current year data for each of the next five years. The CLP Coalition contended that a third-party auditor should be jointly selected by BellSouth and the CLPs, and that if the parties cannot agree on the auditor, the Commission should determine the auditor. The CLP Coalition contended that the CLPs, BellSouth, and the Commission should jointly determine the scope of the audit.

The CLP Coalition argued that periodic audits need to be addressed at a state level rather than at the regional level as BellSouth advocates for at least two reasons. First, the CLP Coalition stated that many of BellSouth's processes, such as provisioning, repair, and collocation, are handled at the state level. Second, the CLP Coalition stated that it would prove difficult for the Commission to be involved in an audit implemented on a regional basis.

R-DVA-5: The CLP Coalition stated that the audit, which is designed to ensure BellSouth is meeting its legal obligations, should come at BellSouth's expense. The CLP Coalition noted that the Michigan Public Service commission has required SBC Ameritech to implement annual audits that SBC Ameritech pays for without specifying a termination date and the Pennsylvania (PSC) required Verizon to pay for the first annual audit, with future audit cost responsibility to be determined later.

R-DVA-6: The CLP Coalition contended that in addition to an annual audit, when a CLP has reason to believe the data collected for a measure are flawed or the reporting criteria for the measure is not being adhered to, the CLP should have the right to request a mini-audit on the specific measure/submeasure upon written request (including e-mail), which will include the designation of a CLP representative to engage in discussions with BellSouth about the requested mini-audit.

R-DVA-1: The Public Staff did not address this issue specifically.

R-DVA-2 through R-DVA-6: In its Proposed Order, the Public Staff recommended that the Commission conclude that the CLP Coalition's proposal for mini-audits is unworkable and should not be approved, primarily because the potential number of simultaneous mini-audits that could be requested by the CLPs could pose an inordinate burden on BellSouth. The Public Staff suggested that if any CLP has serious concerns about the performance data and SQM reports, it can file a complaint and request that the Commission order a third-party audit of the measures or data that are being challenged. The Public Staff recommended that BellSouth and the CLPs initially share the cost for such an audit equally, with the Commission having the option to reconsider the ultimate assignment of the costs.

The Public Staff did not make recommendations as far as whether audits should be conducted at a regional or state level but proposed that the CLPs and BellSouth be directed to file recommendations concerning the scope of the initial audit.

The Public Staff proposed comprehensive annual third-party audits of BellSouth's performance measures plan and self-enforcing penalties plan with the following conditions:

(1) At least two annual audits to be conducted under the supervision of the Commission with the first audit to commence no earlier than one year following the date that a final order establishing an SQM plan and SEEM plan is issued in this docket. The Public Staff further recommended that the starting date for the second and subsequent audits be set by future order of the Commission and that BellSouth be responsible for the full cost of these audits.

(2) BellSouth and the CLPs will be directed to file recommendations concerning the scope and conduct of the initial audit no later than 10 months following the issuance of a final order in this docket. BellSouth, the CLPs, and the Public Staff will be directed to file responses to these proposals within 30 days after filing.

(3) BellSouth will select the third-party auditor with the approval of the Commission. The Commission will then issue an order outlining the scope and conduct of the initial audit based upon recommendations from BellSouth, the CLPs, and the Public Staff.

(4) No later than 15 days after the Commission issues the order outlining the scope and conduct of the audit, BellSouth will file a copy of the proposed contract with the third-party auditor for Commission approval. The Commission, BellSouth, and the third-party auditor will be signatories to this contract.

The Commission notes that both the CLPs and BellSouth agree on many of the questions relating to third-party audits. The areas of disagreement appear to be who pays for the audit, whether the audit should be conducted at the state or regional level, and whether there should be mini-audits.

Only BellSouth addressed the issue of whether in confirming if performance measures are accurate and complete, the auditor should manually compile data into the form reported by the relevant ILEC and confirm that the manually report results match equivalent automated reports generated by the ILEC. The Commission agrees with BellSouth that it does not need to addressed as a part of this proceeding. This matter should be addressed in the scope of the audit, if necessary.

The Commission agrees with the Public Staff and the CLP Coalition that the costs of the audits should be borne by BellSouth for the reasons outlined by the CLP Coalition. We further believe that the audits should be conducted at the state level for the reasons outlined by the CLP Coalition. If there are some processes which can only be done at the regional level, then BellSouth must make a threshold showing why they must be audited on a regional basis. The Commission agrees with the Public Staff's proposal that BellSouth and the third-party auditor be a signatory to the contract. However, we do not believe it is necessary for the Commission to be a signatory to the contract.

We agree with the Public Staff and BellSouth that the "mini-audits" are unworkable for the reasons stated by the Public Staff and BellSouth. However, as proposed by the Public Staff, if any CLP has serious concerns about the performance data and SQM reports, they can request a third-party audit on the measures they are challenging. We agree with the Public Staff that BellSouth and the CLP should initially share the cost for such an audit equally, with the Commission having the option to reconsider the ultimate assignment of the costs.

CONCLUSIONS

R-DVA-1: The Commission concludes that this matter (whether in confirming performance measures are accurate and complete, the auditor should manually compile data into the form reported by the relevant ILEC and confirm that the manually reported results match equivalent automated reports generated by the ILECs), not be addressed as a part of this proceeding, but addressed in the scope of the audit, if necessary.

R-DVA-2, R-DVA-3, R-DVA-4, AND R-DVA-5: The Commission concludes that the following conditions for annual third-party audits of BellSouth's performance measures plan and self-enforcing penalties plan be implemented:

(1) Five comprehensive annual audits of the current year aggregate level reports for both BellSouth and the CLP(s) will be conducted under the supervision of the Commission with the first audit to commence no earlier than one year following the date that a final order establishing an SQM plan and Self-Effectuating Enforcement Mechanism (SEEM) plan is issued in this docket. The starting date for the second and subsequent audits will be set by future order of the Commission. The audits should be at a state level. If there are some processes which can only be audited at the regional level, then BellSouth can make a threshold showing why they must be audited on a regional basis. Since the audits are an integral part of a performance measurement plan designed to ensure BellSouth's compliance with the Act, BellSouth will be responsible for the full cost of these audits.

(2) BellSouth and the CLPs are directed to file recommendations concerning the scope and conduct of the initial audit no later than ten months following the issuance of a final order in this docket. BellSouth, the CLPs, and the Public Staff are directed to file responses to these proposals within 30 days after filing.

(3) BellSouth and the CLPs will select the third-party auditor with the approval of the Commission. The Commission will then issue an order outlining the scope and conduct of the initial audit based upon recommendations from BellSouth, the CLPs, and the Public Staff.

(4) No later than fifteen days after the Commission issues the order outlining the scope and conduct of the audit, BellSouth will file a copy of the proposed contract with the third-party auditor for Commission approval. BellSouth and the third-party auditor will be signatories to this contract.

R-DVA-6: The Commission concludes that the CLPs proposal for "mini-audits" is unworkable and should not be approved, primarily because the potential inordinate burden which could be imposed on BellSouth. However, the Commission concludes that if any CLP has serious concerns about the performance data and SQM reports, they can request a third-party audit on the measures that they are challenging. The Commission further concludes that BellSouth and the CLP will initially share the cost for such an audit equally, with the Commission having the option to reconsider the ultimate assignment of the costs.

The Commission directs BellSouth to revise Section C-2 of Appendix C of the North Carolina SQM consistent with these changes and to submit a revised copy to the Commission by no later than June 21, 2002.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

R-DAR-1: Should CLPs have access to the performance measurement system values used in the ILEC's calculation of its own results specified in the reported performance?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth did not specifically address this issue in its Brief or Proposed Order.

CLP COALITION: The CLPs argued that they should have access, upon request, to all raw data upon which BellSouth's performance reports are based, without regard to whether such data is included in or excluded from the reports.

PUBLIC STAFF: The Public Staff is of the opinion that BellSouth should be required to provide to each CLP all available raw data that the CLP may require to audit its individual performance and enforcement reports for the preceding month. However, the Public Staff takes the position that BellSouth should not be required to provide the underlying data that it uses to calculate its retail analog performance statistics.

DISCUSSION

As indicated above, the CLPs argued that they should have access, upon request, to all raw data upon which BellSouth's performance reports are based, without regard to whether such data is included in or excluded from the reports. The CLPs are also of the opinion that the performance reports and the raw data upon which they are based should be made available on the

15th day of the month first following the month being measured. Additionally, the CLPs contended that BellSouth should be required to maintain a current and accurate user's manual to support CLPs when accessing and interpreting the raw data. Further, the CLPs opined that BellSouth should be required to provide a knowledgeable single point of contact with whom a CLP could confer to resolve questions about accessing the raw data.

The CLPs commented that, although BellSouth provides raw data for several measures today, in other cases, such as local number portability (LNP) measures, it does not. The CLPs stated that, for many facilities based CLPs, LNP orders are a critical aspect of their business and that, by not providing access to LNP raw data, BellSouth prohibits CLPs from validating its reported performance.

In other cases, according to the CLPs, BellSouth provides raw data, but not in a manner that allows its meaningful use by the CLP. For example, according to the CLPs, while BellSouth provides raw data for its hot cut timeliness measure, it does not provide the Purchase Order Number (PON) so that a CLP can compare its own data to that reported by BellSouth to validate the accuracy of BellSouth's reports. Also, the CLPs alleged that other raw data is flawed and thus cannot be used for its intended purpose of validating BellSouth's performance reports. For example, according to the CLPs, the raw data for the firm order confirmation (FOC) and rejection measures include null values and calculated duration intervals, not the raw data which is required to allow the CLP to validate the reported duration.

The CLPs averred that access to the raw data used to create performance reports is essential to a CLP's ability to validate the performance data and reports provided by BellSouth.

BellSouth witness Varner stated that BellSouth would begin providing LNP raw data and the purchase order numbers associated with the transactions included in all Hot Cut Measures in June 2001, which would be based on May data. Witness Varner also testified that the raw data for the FOC and Reject Interval reports does furnish the duration in a field in the raw data file. He further stated, however, that the start and stop time fields are also in that same data file.

The CLPs, after having noted that BellSouth provides access to data and reports on its Performance Measurement Analysis Platform (PMAP) website, commented that the response times for the website are slow, and CLPs find it onerous to obtain the reports they need one at a time. The CLPs argued that BellSouth should be required to work with the CLPs on improving the ease of use and responsiveness of BellSouth's website.

Witness Varner testified that response times of the BellSouth website are based on many factors, including for example, the size of the file requested, the speed of the modem used by the CLP, the speed of the computer used by the CLP, the traffic on the server at that particular time of the day, and other factors outside of BellSouth's control. Witness Varner commented that it is obvious that improvement in response time would require action not only by BellSouth but by the individual CLPs as well.

The CLPs further argued that, if BellSouth or a CLP discovers that raw data records or performance reports exclude data, omit data, are calculated incorrectly, or contain an error of any type, BellSouth should be required to immediately notify affected CLPs, make arrangements to correct the raw data or performance reports, and submit the corrected report to the CLPs. Furthermore, the CLPs commented that, if BellSouth or a CLP discovers a data error after the report is no longer accessible to CLPs, BellSouth should remain responsible for correcting the error and immediately notifying the CLPs of the error and the measures taken to make the correction. The CLPs are also of the opinion that BellSouth's obligation to correct errors after access to the reports has ended should remain in effect for 12 months after the date the report is no longer accessible to CLPs. The CLPs indicated that the Florida Commission had ordered BellSouth to retain raw data for performance measures for a period of 18 months and to retain the monthly reports produced in PMAP for a period of three years.

The CLPs argued that most other ILECs, i.e., ILECs other than BellSouth, can provide data on their metrics by the 20th or 24th day of the month following the month in which the reported activity occurs. The CLPs noted that the Florida Commission had ruled that reports should be posted by the 30th day after the month in which the reported activity occurs. The CLPs also noted that the Florida Commission in its ruling had encouraged BellSouth to make available all raw data that supports all reports derived from the PMAP.

In conclusion, the CLPs took the position that the performance reports and the raw data upon which they are based should be made available on the 15th day of the month first following the month in which the reported activity occurs.

The Public Staff is of the opinion that BellSouth should be required to provide to each CLP, via the PMAP website, all available raw data that the CLP may require to audit its individual performance and enforcement reports for the preceding month, including data that are excluded from the SQM and SEEM calculations. However, the Public Staff takes the position that BellSouth should not be required to provide the underlying data that it uses to calculate its retail analog performance statistics. The Public Staff did not offer any justification in support of this latter position in its Proposed Order.

The Public Staff is also of the view that all raw data and performance and enforcement reports for each monthly reporting period should be provided in final form on the PMAP website by no later than 12:01 a.m. on the last day of the succeeding month. Further, the Public Staff is of the opinion that BellSouth should be required to ensure that clear, complete instructions are provided, via the PMAP, to enable the CLPs to duplicate the reported statistics from the raw data. Further, the Public Staff opined that BellSouth should be required to offer timely and prompt assistance to CLP representatives who have questions concerning the calculation procedures.

As indicated above, the CLPs contended that BellSouth should be required to maintain a current and accurate user's manual to support CLPs when accessing and interpreting the raw data. The Public Staff has taken the position that BellSouth should be required to ensure that clear, complete instructions are provided, via the PMAP, to enable the CLPs to duplicate the reported statistics from the raw data. BellSouth witness Varner testified that BellSouth makes available a comprehensive raw data user's manual that allows the CLPs to build customized reports and further disaggregate reports based on individual CLP needs. Thus, the issue in this regard appears to concern the adequateness of BellSouth's existing user's manual rather than allegations that such a manual does not now exist.

Finally, the Public Staff commented that BellSouth should be required to allow the Commission Staff and the Public Staff to access, via the PMAP, all aggregate CLP performance and enforcement reports and all raw data that were used in preparing these reports, including excluded data, along with clear, complete instructions showing how these data were manipulated to produce the reported results.

After having carefully reviewed and considered the entire evidence of record, the Commission is of the opinion that the arguments offered by the parties in support of their positions, as identified below, are the most persuasive and as such should be accepted by the Commission for purposes of this proceeding. Specifically, the Commission agrees:

(1) With the CLPs, that access to all raw data used to create performance reports is essential to a CLP's ability to validate the performance data and reports provided by BellSouth, including the raw data, to the extent it exists, that BellSouth uses or otherwise relies on to calculate its retail analog performance statistics;

(2) With the CLPs and the Public Staff, that the performance and enforcement reports and the raw data that were used in preparing these reports, including excluded data, should be provided via the PMAP in a format or formats that can be readily downloaded, understood, and manipulated by each CLP for purposes of verifying its reported results;

(3) With the Public Staff, that BellSouth should allow the Public Staff and the Commission Staff ongoing access, via the PMAP, to all aggregate CLP performance and enforcement reports and all raw data that were used in preparing these reports;

(4) With the CLPs and the Public Staff, that BellSouth should make available a comprehensive, clear, complete, detailed user's manual, with easily accessible instructions, via the PMAP, showing how the raw data were manipulated to produce the reported results to enable the CLPs to duplicate the reported statistics from the raw data;

(5) With the CLPs, that BellSouth should be required to identify and provide easy access to a BellSouth point of contact with whom CLPs can confer to resolve questions about accessing the raw data, including, but not limited to, explanations of the fields, parameters, code definitions, file column purposes, and headings and that, as argued by the Public Staff, BellSouth should be instructed to otherwise provide timely assistance to CLP representatives who have questions concerning the calculation procedures;

(6) With the Public Staff, that all raw data and performance and enforcement reports for each monthly reporting period should be provided in final form on the PMAP website by no later than 12:01 a.m. on the last day of the month first following the month in which the reported activity occurs; and

(7) With the CLPs that BellSouth should be required to work with the CLPs to make the PMAP website easier to use and more responsive.

Further, the Commission is of the opinion that 18 months is a reasonable period of time for BellSouth to be required to retain the raw data on which the performance measures are based and that three years is a reasonable period of time for BellSouth to retain the monthly reports produced in the PMAP. These retention periods are consistent with the decision of the Florida Commission.

Finally, regarding the CLPs' position that BellSouth's obligation to correct errors should remain for 12 months after the date the report is removed from the website, it is noted that such position is consistent with the Agreed Principles relating to Data Access and Reporting as reflected in the Task Force Final Report. Consequently, this matter does not appear to be in controversy in this proceeding.

CONCLUSIONS

The Commission concludes that BellSouth is required:

(1) To provide the CLPs with access to all raw data used to create performance reports, including the raw data, to the extent it exists, that BellSouth uses or otherwise relies on to calculate its retail analog performance statistics;

(2) To provide the data required in Item No. (1) above via the PMAP in a format or formats that can be readily downloaded, understood, and manipulated by each CLP for purposes of verifying its reported results;

(3) To allow the Public Staff and the Commission Staff ongoing access, via the PMAP, to all aggregate CLP performance and enforcement reports and all raw data that were used in preparing these reports;

(4) To make a comprehensive, clear, complete, detailed user's manual available, via the PMAP, with easily accessible instructions, showing how the raw data were manipulated to produce the reported results to allow for the duplication/verification of the reported statistics from the raw data;

(5) To identify and provide easy access to a BellSouth point of contact with whom CLPs can confer to resolve questions about accessing the raw data, including, but not limited to, explanations of the fields, parameters, code definitions, file column purposes, and headings, and to otherwise provide timely assistance to CLP representatives who have questions concerning the calculation procedures;

(6) To provide all raw data and performance and enforcement reports for each monthly reporting period in final form on the PMAP website by no later than 12:01 a.m. on the last day of the month first following the month in which the reported activity occurs;

(7) To work with the CLPs to make the PMAP website easier to use and more responsive;

(8) To retain the raw data on which the performance measures are based for a period of 18 months and to retain the monthly reports produced in the PMAP for a period of three years; and

(9) To be responsible for correcting errors for a period of 12 months after the date the report is no longer accessible to the CLP, i.e., for a period of 12 months after the date the report is removed from the website.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

R-STA-1: What test statistic should be used in making parity determinations?

R-STA-2: Should each performance measure of interest be summarized by one overall test statistic?

R-STA-3: Should a parity determination be based on the aggregate test statistic at the measure level or the test statistic at the submeasure level?

R-STA-4: What quantitative means exist for determining critical value based on the sample size?

R-STA-5: Since completion of the "Balancing Critical Value Technique" cannot occur until the parameter "delta" is determined, what is the appropriate value of the parameter "delta"?

R-STA-6: When is statistical testing appropriate?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth recommended using a combination of the modified Z and truncated Z test statistics with error probability balancing to make parity determinations for measurements that involve BellSouth retail analogs. Each performance measure of interest should be evaluated by one overall test statistic. The balancing critical value technique should incorporate a delta value of 1.0 for Tier 1 and 0.50 for Tier 2 mean measures. The odds ratio method should be used for proportion and rate measures. For small sample sizes, permutation analysis should be used. Statistical testing must be done to make parity determinations for measurements for which there are BellSouth retail analogs. There is no need for a statistical test for any measurement having a benchmark, since benchmarks are either met or they are not. However, when samples sizes are small for benchmark measurements, BellSouth proposed to use a small sample size table based on a 95% confidence interval to adjust the benchmark.

CLP COALITION: The CLPs recommended use of the modified Z test statistic and the balancing critical value method to make parity determinations for performance measures with a BellSouth retail analog. It is not always appropriate to have one aggregate statistic per performance measure. The balancing critical value technique should incorporate a delta value of 0.25 for Tier 1 and Tier 2 measures. The transformed data method should be used for proportion and rate measures. For small sample sizes, permutation analysis should be used. The Parties agree that a statistical methodology should be used for determining compliance with BellSouth retail analogs. Where the standard is a benchmark, no statistical test is applied. When the sample size is small for benchmark measures, the CLP Coalition recommended using a benchmark adjustment table based on a non-statistical approach.

PUBLIC STAFF: The Public Staff recommends using the truncated Z test statistic with error probability balancing to evaluate parity where transaction level data is available and a BellSouth retail analog exists. The delta value should be set at 0.50 for Tier 1 measures and 0.35 for Tier 2 measures. The transformation methodology should be used to calculate Z statistics for proportion and rate measures. For small sample sizes, permutation analysis should be used. When the number of transactions is small for a particular benchmark measurement, the Public Staff recommended using the statistical approach proposed by BellSouth.

DISCUSSION

BellSouth witness Mulrow and CLP Coalition witness Bell testified concerning the appropriate statistical methodologies to determine if BellSouth is providing parity service to individual CLPs, or Tier 1 testing, and the CLP community, or Tier 2 testing, where transaction level data is available and a BellSouth retail analog exists.

BellSouth witness Mulrow recommended using the truncated Z methodology with error probability balancing as described in witness Mulrow's Exhibit EJM-1, the Louisiana Statisticians' Report. For tests that involve proportions or rates, Dr. Mulrow also recommended the use of an odds ratio test.

CLP Coalition witness Bell recommended using the modified Z statistic and the balancing critical value method to make parity determinations. Witness Bell recommended using the same statistical approach regardless of whether the measures involve means, proportions, or rates. However, witness Bell also testified that use of the truncated Z method as proposed by BellSouth would be appropriate if the Commission approves a plan that allows for a reasonable and appropriate level of aggregation.

For sample sizes of less than 30, both witnesses recommended using a permutation analysis which compares the observed results for the CLP customers with the distribution of results that would be observed if the CLP customers had been drawn at random from the pool of CLP and BellSouth customers. Both witnesses also agreed that when a modified Z or truncated Z statistic is used with error probability balancing, it is appropriate to use a value called "delta" to specify the minimum degree of service disparity that would cause a material negative impact on competition.

The Louisiana Statisticians' Report describes how measure testing begins at the "cell" level with the goal of providing true like-to-like comparisons between BellSouth and the CLPs. During each reporting period, BellSouth's relevant performance on each individual transaction between it and a customer is measured, and the resulting measurement is assigned to the appropriate cell. For example, in the case of service orders completed during the reporting period (transactions), the lengths of time required to complete the orders are measured, and these measurements (observations) are assigned into "like" categories (cells) based upon the type of service ordered, when it is ordered and where. As BellSouth completes orders during the reporting period, these cells are gradually populated with observations. At the end of the reporting period the accumulated data, if they can be properly analyzed and interpreted, will allow a determination of whether BellSouth is providing parity service to the CLPs.

According to witness Mulrow, the first step in the analysis of these data is to calculate a statistic called a "cell Z value" for each individual cell. Any negative Z statistics that result from this process, which suggest that BellSouth's retail operations are being favored over the CLPs, are left "as is". Any positive Z statistics, which suggest that CLPs are being favored over BellSouth retail customers, are set to zero. This is the truncation step. The resulting truncated Z statistics for related cells are aggregated by weighting the cells according to the number of transactions in each cell, and a truncated Z statistic is determined for the particular measurement for which the observations were made.

Witness Mulrow opined that the best way to determine whether a negative Z statistic is significant is to use error probability balancing. He stated that two types of errors could occur in evaluating the observed differences between service to BellSouth's customers and service to CLP customers. A Type 1 error occurs when the test indicates that BellSouth is favoring its retail operations but, in fact, parity exists. A Type 2 error occurs when the test indicates that parity has been achieved but, in fact, disparity exists. Both types of errors occur because of random variation. Witness Mulrow explained that the error probability balancing method involves the derivation of a balancing critical value figure that yields an equal probability of committing either type of error. As outlined in Appendix C to the Louisiana Statisticians' Report, the formulae that are used to make this calculation depend upon the type of performance measure, the number of BellSouth and CLP transactions, and the delta that is used in the formula. Witness Mulrow stated that delta is a factor that is used to identify whether a meaningful difference exists between the BellSouth and CLP performance in addition to a statistical difference.

CLP Coalition witness Bell testified that the truncated Z methodology is appropriate for aggregating homogeneous cells, but he expressed concern that excessive aggregation could conceal or mask discrimination. Witness Bell used the example of installation intervals for DS3 and Plain Old Telephone Service (POTS) loops to illustrate how poor performance for a relatively small sample of DS3 loops can be masked by acceptable performance on a larger number of POTS loops if the two cells are aggregated. However, upon cross-examination, witness Bell noted that the decision to aggregate or not is based on business judgment, and that the truncated Z methodology would be appropriate if the submeasures were aggregated appropriately.

Witness Bell testified that the parameter delta can be used to define the degree of violation of parity for which the probability of Type 1 error is balanced against the probability of Type 2 error. He recommended that a delta value be used for all three types of measures and offered tables illustrating the implications of various delta values for a mean measure, Order

Completion Interval, and for a proportion measure, Percentage of CLP Customers Receiving Bad Service. According to witness Bell, the second table assumed the use of an arcsine square root transformation.[1]

In his rebuttal testimony, BellSouth witness Mulrow contended that witness Bell inappropriately used the same statistical approach for mean, proportion, and rate measures. Witness Mulrow stated that in the case of mean measures, the average or mean of the BellSouth transactions in a cell is compared to the average of the CLP transactions. Some measures, however, are not expressed in terms of means. For example, missed appointments is a proportion measure where performance is expressed as a percentage. A rate measure such as a customer trouble report rate, which is typically expressed as the number of reports per 100 access lines, is another performance measure which is not expressed in terms of a mean. He stated that the concept that the modified Z statistic is based upon should not be applied to all measure types. As a result, witness Mulrow advocated the odds ratio methodology discussed in the Louisiana Statisticians' Report for proportion and rate measures. As its name implies, this methodology is based on the ratio of the odds that an event will occur in the case of a CLP customer to the odds that the event will occur in the case of a BellSouth customer. An odds ratio greater than one indicates that BellSouth may not be providing parity service. Balancing the errors and determining the material level of disparity using the odds ratio methodology does not require specifying a delta value; it only requires the specification of an odds ratio greater than one. While witness Mulrow offered an example involving a percentage missed installations measure, which compared outcomes using an odds ratio of 2 and an odds ratio of 3, he did not make a specific recommendation on the appropriate odds ratio for proportion or rate measures.

BellSouth witnesses Mulrow, Varner, and Taylor and CLP Coalition witness Bell also testified on the delta issue. Both parties agreed that the balancing critical value method should be used to balance Type 1 and Type 2 errors, but did not agree on a value for the delta parameter. Delta is a factor that is used to identify whether a meaningful difference exists in performance in addition to a statistically significant difference. Both parties also agreed that the appropriate value for delta should be based on economic and business judgment.

CLP witness Bell stated that the CLPs propose a delta of 0.25 for all measures. To support this recommendation, witness Bell calculated the effect of various delta values to illustrate the degree of disparity associated with an interval measure. Witness Bell contended that if the delta was set substantially above the minimum value that represents a material impact on competition, then the CLPs would face greater risk of a Type 2 error. Witness Bell also noted that if the delta is set too high, the problem of improper balancing would be magnified for large sample sizes. According to witness Bell, one solution would be to place a lower limit on the size of the balancing critical value. However, he stated that if the CLPs' recommendation of a delta value of 0.25 was adopted, a floor value should be unnecessary.

BellSouth witness Varner testified that BellSouth proposes to use a delta value of 1.0 for Tier 1 testing and a delta value of 0.50 for Tier 2 testing. With regard to Tier 2 testing, BellSouth witness Mulrow noted the recommendation of the Louisiana Statisticians' Report that it might be

[1] The arcsine square root transformation and the square root transformations are noted in Appendix C, Pgs. C-8 through C-10 of the Louisiana Statisticians' Report.

prudent to use a smaller value of delta for Tier 2 testing than for Tier 1 testing. He explained that since Tier 2 involves an aggregation of all CLPs' results, poor service to a few small CLPs could be masked by better service to the rest of the CLPs. One way to try to avoid such masking would be to use a smaller delta for the Tier 2 tests. In his rebuttal testimony, witness Mulrow stated that he was not sure a delta of 0.25 was correct, adding that the Louisiana and Georgia Commissions have ordered deltas of 1 and 0.5, respectively. He also stated that establishment of a floor for the balancing critical value is not necessary if delta is chosen so that it truly defines the materiality threshold. He further emphasized that once delta is chosen, BellSouth would be found out of parity whenever the observed difference in mean performance is larger than one-half delta times the BellSouth standard deviation.

BellSouth witness Taylor testified that whatever delta is chosen at this time must necessarily be an educated guess, and its statistical and business implications need to be followed closely. Dr. Taylor agreed that the performance disparity gap increases with the value of delta, but contended that witness Bell's examples and resulting inferences focused entirely on statistical measures and made no effort to determine the economic or competitive significance of the disparities. He further contended that setting remedies without taking into account the likely economic significance of performance disparities can give rise to a "moral hazard," that is, a form of gaming by which a party to a plan may act in ways that allow it to gain an unanticipated competitive or financial advantage at the expense of the other party.

Finally, while not a statistical issue related to performance measurements that involve BellSouth retail analogs, the Parties all recognized the need to adjust benchmarks when sample sizes are small. Both BellSouth witness Varner and CLP Coalition witness Bursh described how it would be possible for BellSouth to fail to meet a particular benchmark when only a few transactions occur, and therefore, both of these witnesses agreed that the benchmark should be adjusted when the sample size is small. However, each of these witnesses recommended an adjustment based on a different approach. BellSouth witness Varner advocated using a statistical approach. More specifically, witness Varner recommended that the benchmark should be adjusted through the use of a small sample size table based on a 95% confidence interval. This table is shown in witness Varner's Exhibit AVJ-6, Appendix E. However, CLP Coalition witness Bursh recommended a non-statistical approach wherein the allowable number of missed transactions is rounded up to the next whole number as shown on the benchmark adjustment table provided in witness Bursh's Exhibit CLB-2.

The Parties agree that the issue of whether the Commission should adopt the use of the modified Z test statistic, as proposed by the CLPs, or the truncated Z test statistic, as proposed by BellSouth, is essentially determined by the Commission's decision on the disaggregation issue. Fundamentally, the issue is the appropriate level of aggregation for performance measures and the appropriate statistical methodology is a fallout. Given the Commission's conclusions herein on the disaggregation issue, which adopts a level of aggregation considerably closer to that proposed by BellSouth than the CLPs, the Commission is of the opinion that it should conclude that the truncated Z test statistic should be used to evaluate parity for means tests where transaction level data is available and a BellSouth retail analog exists. In addition, although BellSouth witness Mulrow advocated the use of the odds ratio method for proportion and rate measures, there is insufficient evidence in the record, if any, concerning what specific odds ratios are appropriate or how to determine an appropriate odds ratio for proportion and rate measures. In view of the lack of evidence concerning the odds ratio, the Commission finds it appropriate to conclude that the transformation method or arcsine square root transformation advocated by CLP witness Bell should be used to calculate Z test statistics for proportion and rate measures. Further, the Commission believes that a permutation analysis should be used to calculate Z test statistics for small sample sizes of 30 or less.

The appropriate value of delta is the most contentious aspect of the statistical methodology. It is important not only because it sets the size of the disparity at which Type 1 and Type 2 errors are balanced but also because it directly impacts the size of the disparity at which BellSouth would pay a penalty for poor performance. BellSouth recommends a delta value of 1.0 for Tier 1 and 0.50 for Tier 2, while the CLPs recommend a delta value of 0.25 for both Tier 1 and Tier 2.

The record clearly shows that there is no established method for setting delta and that the decision is largely one of business judgment. However, the examples cited by CLP Coalition witness Bell vividly illustrate the effects on the competitiveness of CLPs when using BellSouth's recommended 1.0 delta compared to the CLP Coalition's recommendation of 0.25. Unfortunately, the record is devoid of any actual data or other actual examples that could be used as a better guide in setting the delta value or in validating the examples given as representative of actual results. There is very little discussion of anticipated means, sample sizes, standard deviations, or other factors that could shed more light on the proper value of delta.

Despite the lack of guidance provided by the record, the selection of an appropriate delta value is essential to put into place a working enforcement plan. The Commission finds it appropriate to conclude that a 0.5 delta value is appropriate for Tier 1 testing and a 0.35 delta value is appropriate for Tier 2 testing. The Commission's adopted delta values are equal to the delta values adopted for use by the Georgia Public Service Commission and are consistent with the delta values recommended by the Public Staff in this case. These values for delta also represent compromises between the delta values recommended by BellSouth and the CLP Coalition.

The selection of a lower value of delta for Tier 2 is well-supported by the evidence in the record. For example, BellSouth witness Mulrow stated that it might be prudent to use a lower value of delta for Tier 2 testing because when one combines all CLP transactions together, poor service to a few small CLPs could be masked by better service to the rest of the CLPs. One way to avoid such masking is to use a smaller materiality threshold. If Tier 1 results show a disparity between BellSouth and only a few CLPs, there is some uncertainty about what part CLPs may have inadvertently had in a service parity failure. However, when the results are aggregated across all CLPs in Tier 2 testing, there is a greater degree of confidence that any failure is due to BellSouth. The moral hazard described by BellSouth should also be less of a concern for Tier 2 results.

The Commission believes that these delta values, like other conclusions reached in this case, should be subject to review after one year of operating experience is gained. After that time, Parties may prepare and present any arguments to change the delta values based on actual operating experience in North Carolina. In addition, given the particular importance of the delta value issue, the Commission is willing to revisit the delta value issue after six months of operating experience if a Party can make an adequate showing that a change in the delta values is appropriate.

Finally, when the number of transactions is small for a particular benchmark performance measure, the Commission concludes that it is more appropriate to adjust the benchmark using the statistical approach based on a 95% confidence interval as recommended by BellSouth since this procedure incorporates random variation in a statistically sound manner.

CONCLUSIONS

The Commission concludes that the truncated Z test statistic is appropriate to evaluate parity for means test where transaction level data is available and a BellSouth retail analog exists. The Commission also finds that the transformation methodology should be used to calculate Z test statistics for proportion and rate measures for both Tier 1 and Tier 2 testing. Further, permutation analysis should be used to calculate Z test statistics for small sample sizes of 30 or less.

The Commission concludes that a 0.5 delta is appropriate for Tier 1 testing and a 0.35 delta is appropriate for Tier 2 testing. Such delta values should be subject to review of one year of operating experience is gained. After that time, Parties may prepare and present any arguments to change the delta values based on actual operating experience in North Carolina. In addition, given the particular importance of the delta value issue, the Commission is willing to revisit the delta value issue after six months of operating experience if a Party can make an adequate showing that a change in the delta values is appropriate.

Finally, the Commission concludes that the statistical approach recommended by BellSouth should be used to adjust a particular benchmark performance measure when the number of transactions is small.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

R-ENF-1: Should there be additional remedies for discriminatory ILEC performance that affects more than one CLP?

R-ENF-7: What is the appropriate payment structure for a remedy plan?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth proposed a two-tier penalty structure which it believes is superior to the proposal by the CLPs. Under BellSouth's Self-Effectuating Enforcement Mechanism (SEEM), Tier 1 is designed to compensate a particular CLP when materially discriminatory performance by BellSouth would likely harm that CLP's ability to compete and the penalty payments would be paid directly to the affected CLP each month. Tier 2 of BellSouth's plan is designed to require additional payments if there are three consecutive monthly failures in which materially disparate performance is widespread and persistent by BellSouth and the penalty payments would be paid to a state agency. Under BellSouth's plan, remedy penalties are determined using a transactions-based approach, such that the amount of the penalty varies depending on the number of orders missed, or the number of appointments missed, or the number of activities that BellSouth fails to properly perform, i.e., the affected volume of transactions is multiplied by a related fee. The proposed SEEM is presented in BellSouth witness Varner's Exhibit AJV-6, attached to his direct testimony.

CLP COALITION: The CLPs believe that the Commission should adopt the CLP Coalition Performance Incentive Plan (PIP). The CLPs proposed a two-tier penalty structure with Tier 1 remedies to be paid directly to the CLP and Tier 2 remedies to be paid to a state agency for industry level violations of performance standards. Under the PIP, the Tier 1 and Tier 2 penalties would be assessed monthly. In the CLP Coalition's plan, remedies are paid on a per measure basis and all measures are included in the remedy plan. The proposed PIP is presented in CLP Coalition witness Bursh's Exhibit CLB-1, attached to her direct testimony.

PUBLIC STAFF: The Public Staff recommended that the remedy calculations from BellSouth's proposed SEEM should be adopted. The Public Staff contended that transactions-based payments, as proposed by BellSouth, are the most equitable method to compensate CLPs because the penalties are based on the number of transactions in which disparate service occurred.

DISCUSSION

In order to put these issues in perspective, this discussion begins with the following brief comments regarding the purpose and the general attributes of a performance standards enforcement mechanism. The purpose of a self-effectuating enforcement mechanism was explained by BellSouth witness Varner as follows:

> The FCC has made it clear that the primary, if not sole, purpose of a voluntary self-effectuating enforcement mechanism is to guard against RBOC "backsliding" after the RBOC begins to provide interLATA services. That is, the mechanism provides additional incentives to ensure that the RBOC continues to provide nondiscriminatory performance after it has received the so-called "carrot" of long distance approval.

Witness Varner also pointed out that the TA96 does not require a self-effectuating enforcement plan. Further, witness Varner noted that the FCC has stated that the existence of such an enforcement plan is not a prerequisite to compliance with the competitive checklist, but rather is a factor that the FCC will consider in assessing whether the RBOC's entrance into the interLATA market would serve the "public interest". More specifically, the FCC in its *Louisiana II - 271 Order*, at Paragraph 364 states:

> We would be particularly interested in whether such performance monitoring includes appropriate, self-effectuating enforcement mechanisms that are sufficient to ensure compliance with the established performance standards. That is, as part

> of our public interest inquiry, we would inquire whether the BOC has agreed to private and self-executing enforcement mechanisms that are automatically triggered by noncompliance with the applicable performance standard without resort to lengthy regulatory or judicial intervention. The absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent.

BellSouth and the CLP Coalition have presented their respective proposals, the SEEM and the PIP, as enforcement mechanisms which they believe would be sufficient to ensure compliance with the applicable performance standards. The Commission understands that there is agreement between BellSouth and the CLP Coalition on several attributes of an appropriate remedy plan. Both Parties agree on a two-tier remedy structure with Tier 1 remedies being paid to individual CLPs and Tier 2 remedies being paid to a state fund. The Parties agree to the use of retail analogs, and to the use of benchmarks where no retail analog is available. The Parties agree that a statistical methodology should be used for determining compliance with retail. The Parties also agree that there should be an adjustment for small sample sizes when a benchmark is used as the performance standard. The Parties also agree to the use of the balancing critical value methodology, although they disagree as to the value of the parameter delta to be used in conjunction with the balancing methodology.

The specific aspects of the matters on which the Parties disagree regarding self-effectuating enforcement mechanisms are individually addressed in various specific issue discussions in this Order. The focus of this immediate discussion concerns, in general terms, the appropriate payment structure for the remedy plan, including the remedy structure for discriminatory ILEC performance that affects more than one CLP. In this regard, the Parties disagree on whether the structure of the remedy plan should be implemented on a transactions-based approach or a measures-based approach and BellSouth disagreed, particularly, with the structure of the CLP plan, whereby Tier 2 penalties are invoked in any given month in which performance to the industry as a whole fails to meet the accepted standard.

BellSouth witness Varner explained that under BellSouth's SEEM proposal the penalty payment would be determined by multiplying the fee per transaction, using the fee schedules in Appendix A of the SEEM (Exhibit AJV-6), by the appropriate volume of transactions which is calculated as described in Appendix E of the SEEM. Witness Varner testified that BellSouth's transactions-based approach is significantly better than a plan where the penalties are based on individual measurements rather than individual transactions. Witness Varner contended that a transactions-based approach is better because it is scalable, i.e., the more transactions where disparate performance is detected, the higher the penalty. Under the transactions-based approach, witness Varner explained that the amount of penalty varies depending on the number of orders missed, or the number of appointments missed, or the number of activities that BellSouth fails to properly perform, whereas, under the CLPs' plan this is irrelevant. Further, witness Varner testified that BellSouth's enforcement plan includes 56 Tier 1 measurements and 74 Tier 2 measurements. Witness Varner stated that BellSouth does not use all of the 1,200 submetrics and combinations of submetrics it has identified because: (1) some of them are regional in nature; (2) a number of them are interdependent, that is, you miss one and you miss another one or more; and (3) a number involve parity by design, such as E911 service, where BellSouth cannot tell whether the call is coming from its retail operations or from the CLPs. Whereas, according to witness Varner, the CLPs' plan is entirely different in that it treats every one of its untold number of measurements as a customer affecting measurement to which a penalty is assigned, such that if there were 330,000 measurements, there would be an opportunity, under the CLP plan to pay penalties on every one of those measurements. Witness Varner stated that the CLP plan ignores the number of transactions that take place, and instead, requires BellSouth to pay a penalty if the measure is missed. Further, witness Varner noted that the CLP penalties range from $2,500 for minor failures to $25,000 for severe failures, thus, the CLPs' plan also involves astronomical sums of money without regard to damage done.

For those services where a benchmark is used, witness Varner explained that the affected volume of transactions would be the number of transactions for which BellSouth has missed the performance standard. Witness Varner provided an example where BellSouth returned 13 Firm Order Confirmations (FOCs) late in a month and stated that if the standard required no more than 10 late FOCs per month, BellSouth would pay a penalty on three transactions, which is the number of missed FOCs in excess of the 10 defined as material nondiscriminatory performance. Thus, in this example, according to witness Varner, three is the affected volume. Witness Varner reasoned that if the benchmark represents the minimum level of acceptable performance, performance that does not meet the benchmark would indicate material discrimination.

For those services where a retail analog is used, witness Varner explained that the affected volume of transactions would be determined based on the use of sophisticated statistical tests as described by BellSouth witness Mulrow. BellSouth provided calculation examples in Appendix E of the SEEM. The appropriateness of the statistical tests are not addressed in this discussion as they have been previously addressed, herein above, in other issues discussed in this Order.

Under BellSouth's SEEM proposal, according to witness Varner the basic functioning of Tier 1 of BellSouth's plan is as follows:

> Payments under Tier 1 are designed to compensate an individual CLP when materially discriminatory performance by BellSouth would likely harm that CLP's ability to compete. Thus, Tier 1 payments are made directly to the affected CLP each month. Where materially discriminatory performance occurs in consecutive months, the Tier 1 payment per failure increases. The SEEM measurements that could trigger payments under Tier 1 cover all of the key outcomes that could have a material impact on a CLP's ability to compete.

In particular, for an individual CLP, BellSouth's SEEM proposal provides a Tier 1 enforcement mechanism that provides for a Tier 1 penalty per transaction which increases each consecutive month that the performance standard is not met, up through Month 6 and failures beyond Month 6 will be subject to Month 6 fees. The appropriateness of BellSouth's proposal in this regard is addressed subsequently in the Evidence and Conclusions for Finding of Fact No. 10, concerning R-ENF-9.

Under BellSouth's SEEM proposal, as stated by BellSouth in its Proposed Order, Tier 2 of BellSouth's plan "is designed to require additional payments if materially disparate performance is widespread and persistent. Consequently, payments are based on performance for the CLP industry averaged over three months." More specifically, BellSouth explained that if there is a failure in a Tier 2 metric for three consecutive months, Tier 2 penalties would apply. BellSouth noted that the penalties would be calculated by averaging the affected volumes during the three-month period and then this number would be multiplied by the fee that is applicable to the particular Tier 2 metric. BellSouth witness Varner testified that at least three months of data should be used to determine if there is a pattern of persistent disparate treatment to the CLP industry, as many factors affect performance, the use of one month's data would not be sufficient to determine persistent disparate treatment. The appropriateness of BellSouth's proposal in this regard is addressed subsequently in the Evidence and Conclusions for Finding of Fact No. 9, concerning R-ENF-8.

In its Proposed Order, the CLP Coalition stated that, under its plan, remedies are paid on a per measure basis and all measures are included in the remedy plan, i.e., under the CLPs' PIP, remedies would be made based upon a finding of discrimination for a particular measure, independent of the number of transactions and the type of measure. The CLP Coalition is opposed to BellSouth's transactions-based approach and asserted that accruing remedies on a transaction basis as set forth in SEEM minimizes BellSouth's liability because a significant number of CLPs are currently at an embryonic level of activity. The CLPs contended that basing penalties on these low volumes would not generate sufficient remedies to motivate compliant behavior by BellSouth. Consequently, the CLP Coalition proposed that, at least initially, remedies should accrue on a per measure basis. The CLPs asserted that, in a measures-based approach, remedies accrue at the level in which the comparisons are made (i.e. at the measure/submeasure level). Thus, the CLP Coalition commented that its remedy amount is a direct function of the departure of BellSouth's performance from parity. Additionally, the CLP Coalition explained that a measures-based plan as proposed by the CLPs will generate more remedies as the severity of the discriminatory performance escalates. Consequently, the CLPs asserted that a measures-based plan, rather than a transactions-based plan, would be more effective in motivating compliant performance on the part of BellSouth.

Under the CLPs' PIP proposal, Tier 1 penalties would be assessed monthly. According to CLP Coalition witness Bursh, the basic functioning of Tier 1 of the CLPs' plan is as follows:

> Tier 1 addresses the remedies for noncompliant performance delivered to an individual CLP. Tier 1 remedies are paid to the individual CLPs for the harm suffered by the CLP and its customers. Under Tier 1 of the CLP Plan, however, remedies are only generated for an individual CLP if that CLP's business activity touches upon a particular submeasure. For example, a CLP who does not sell port and loop combinations (UNE P) would not have compliance determinations made for the submeasure Missed Installation Appointment - UNE P.

For Tier 1 failures, under the PIP, there are remedy calculations resulting from the CLPs' determination of the level of severity, i.e., basic, intermediate, or severe, determined by applying the quadratic function of the measured modified-z score to the balancing critical value for parity measures or by applying specific range deviations of benchmark results. As set forth in the PIP, this penalty ranges from a minimum of $2,500 to a maximum of $25,000 per failed measure. Additional remedies also apply for chronic Tier 1 failures, as the PIP calls for a $25,000 payment to the CLP for chronic or recurring performance failures. According to witness Bursh, this $25,000 payment for chronic failures is levied beginning with the third month that a particular submeasure is missed and continues until performance returns to the compliant level. The appropriateness of these particular aspects of the CLPs' proposal are addressed in the Evidence and Conclusions for Findings of Facts Nos. 10 and 9, respectively.

Under the CLPs' PIP proposal, the Tier 2 penalties would be assessed monthly. According to witness Bursh, Tier 2 addresses the remedies for noncompliant performance delivered to the CLP industry as a whole. Additionally, witness Bursh stated that Tier 2 remedies would be paid to the state for harm done to the competitive market and consumers as a whole. Witness Bursh testified that in Tier 2, there are two levels of severity for noncompliant performance for parity and benchmark submeasures: Market Impacting and Market Damaging or Constraining. Under the CLPs' plan, severity of performance is determined based on the ratio of the modified z-score to the balancing critical value. Additionally, according to witness Bursh, penalty calculations would be the same for Tier 2 as for Tier 1, except that Tier 2 would be subject to a market penetration adjustment, i.e., each Tier 2 penalty would be multiplied by an "n" factor that would range from one to 10, based on the percentage of lines serviced by CLPs in North Carolina. Witness Bursh recommended that the Tier 2 payments be paid directly into a state designated fund in which BellSouth would have no direct or indirect interest, for example, the State Treasury. The appropriateness of these particular aspects of the CLPs' proposal are addressed elsewhere in other issues discussed in this Order.

In its Proposed Order, the Public Staff stated that it agreed with BellSouth that the purpose of the remedy plan should be to estimate the economic impact of the disparate service being measured. The Public Staff asserted that the CLP plan arbitrarily sets the same penalty for each type of measure without trying to relate it to the economic harm suffered by the CLPs. Consequently, the Public Staff concluded that BellSouth's method, which places a separate economic value on each type of service being measured, was preferable.

The Public Staff contended that transactions-based payments are the most equitable method to compensate CLPs because the penalties are based on the number of transactions in which disparate service occurred. Accordingly, the Public Staff asserted that BellSouth's plan more realistically estimates the economic harm that would result from performance disparities. Further, the Public Staff stated that BellSouth's plan correctly assesses penalties according to the type of measure since the impact of these measures on the CLPs will vary, and increases that penalty level according the duration of the noncompliant service. The Public Staff also stated that it agrees with BellSouth that Tier 2 penalties should be used to determine a pattern of persistent disparate treatment to the CLP industry and therefore should be based on a three-month rolling average. Additionally, the Public Staff noted that the fee schedules in BellSouth's remedy plan are based on business judgment. Consequently, the Public Staff pointed out that as the Commission and the Parties gain experience in implementing this plan, it may be necessary to change these estimates so that they more closely represent the economic value of the disparity to offset any economic gain BellSouth would achieve from discriminatory behavior.

The Public Staff recommended that the remedy calculations from BellSouth's SEEM be adopted. However, the Public Staff concluded that this plan should be revisited at the first six-month review by the Commission to determine its effectiveness.

The Commission understands that the Parties are in disagreement on the basic premise of the methodology to be used in calculating the appropriate penalties. BellSouth is proposing a transactions-based approach and the CLP Coalition is proposing a measures-based approach. As discussed, herein above, under BellSouth's SEEM proposal, the fee per transaction listed in Appendix A of Exhibit AJV-6 would be multiplied by the affected volume of transactions. The Commission agrees with BellSouth and the Public Staff that BellSouth's transactions-based approach is preferable to a measures-based approach. Under BellSouth's approach, the penalty varies according to the number of transactions in which disparate performance is detected and this appears to be a reasonable method for estimating the economic impact of the disparate service being measured. Whereas, under the CLPs' approach, the same penalty is set for each type of measure, consequently, the Commission fails to see how the CLPs' approach has any resemblance or link to the level of economic harm imposed on the CLPs. Further, as to the CLPs' argument that accruing penalties on a transaction basis is inappropriate since it minimizes BellSouth's liability because, presently, a number of CLPs are currently "at an embryonic level of activity", the Commission finds little merit in that argument as BellSouth witness Varner testified that the CLPs already provide about 10% of the access lines in North Carolina. Accordingly, the Commission agrees with BellSouth and the Public Staff that BellSouth's transactions-based approach, which places a separate economic value on each type of service being measured, is preferable.

Under BellSouth's transactions-based approach, the affected volume, which reflects the number of transactions counting towards the remedy payment, is multiplied by the fee per transaction, using the fee schedules in BellSouth's SEEM. According to BellSouth witness Varner, BellSouth's fee schedules are based on business judgment. In particular, witness Varner explained that BellSouth began with the Texas fee schedule, which the FCC found acceptable as they approved Southwestern Bell's - 271 Application, and then BellSouth used its own judgment to make adjustments, which resulted in its proposed fees which are not identical to Texas, but BellSouth asserted they are comparable. On March 20, 2002, BellSouth made a filing in this docket, advising the Commission that it is now agreeing to include the Service Order Accuracy measure in its permanent set of performance metrics and in the SEEM plan, where it would be subject to Tier 2 penalty payments. BellSouth's proposed fee schedules for Tier 1 and Tier 2, including the addition for Service Order Accuracy under Tier 2 are as follows:

TABLE-1: LIQUIDATED DAMAGES TABLE FOR TIER-1 MEASURES

PER AFFECTED ITEM						
	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Pre-Ordering	$20	$30	$40	$50	$60	$70
Ordering	$40	$50	$60	$70	$80	$90

Provisioning	$100	$125	$175	$250	$325	$500
Provisioning UNE (Coordinated Customer Conversions)	$400	$450	$500	$550	$650	$800
Maintenance and Repair	$100	$125	$175	$250	$325	$500
Maintenance and Repair UNE	$400	$450	$500	$550	$650	$800
LNP	$150	$250	$500	$600	$700	$800
Billing	$1.00	$1.00	$1.00	$1.00	$1.00	$1.00
IC Trunks	$100	$125	$175	$250	$325	$500
Collocation	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000

TABLE-2: REMEDY PAYMENTS FOR TIER-2 MEASURES

	Per Affected Item
OSS Pre-Ordering	$20
Ordering	$60
Provisioning	$300
Provisioning - UNE (Coordinated Customer Conversions)	$875
Maintenance and Repair	$300
Maintenance and Repair – UNE	$875
	Per Affected Item
Billing	$1.00
LNP	$500
IC Trunks	$500
Collocation	$15,000
Change Management	$1,000
Service Order Accuracy	$50

The Commission believes that, as the Commission and the Parties gain experience in implementing this plan, it may be necessary to modify the fee schedules in BellSouth's remedy plan so that they more closely represent the economic value of the disparity to offset any economic gain BellSouth would achieve from discriminatory behavior. Accordingly, this portion of the plan should be revisited at the first Commission review to determine its effectiveness.

The remaining matter to be addressed, under these issues, concerns the Parties' disagreement on the timing of when Tier 2 penalties should be invoked. As explained above, under the CLPs' plan, Tier 2 is invoked in any given month in which performance to the industry as a whole fails to meet the adopted standard. Whereas, under BellSouth's proposal, Tier 2 is designed to require additional payments if there are three consecutive monthly failures in which materially disparate performance is widespread and persistent by BellSouth. The Commission believes that at least three months of data should be used to determine if there is a pattern of persistent disparate treatment to the CLP industry, as the use of one month's data would not be sufficient to make a determination of continuous or persistent disparate treatment. The Commission believes that BellSouth's approach of invoking Tier 2 penalties when there is a duration of a violation over a three-month period is more reasonable and appropriate than the CLPs' approach which creates duplicate penalties for a given failure. The Commission agrees with BellSouth witness Varner's explanation of this effect which was stated as follows:

> [The CLPs' . . .] Tier 2 proposal is nothing more than a multiplier of the Tier 1 penalty. It doesn't address any different issue than Tier 1. [The CLPs'] Tier 2 penalties are assessed each month if statewide performance is below the established standard. Of course, if statewide performance doesn't pass muster, performance for some individual CLPs must be below the standard. BellSouth will have already paid penalties to individual CLPs in this case. It serves no useful purpose to assess BellSouth yet again for the same deficiency for which penalties under Tier 1 would already apply. A more appropriate role for Tier 2 is to address performance that is persistently below the analog or benchmarks. However, assessing Tier 2 each month negates the ability to do this.

Additionally, the multiplication effect is even more extreme considering that the CLPs also proposed to further increase their Tier 2 penalty amounts by a market penetration adjustment using a "n" factor of somewhere between one and 10, which the Commission has not adopted herein, as subsequently discussed in the Evidence and Conclusions for Finding of Fact No. 6, concerning R-ENF-4 and R-ENF-17. In summary, the Commission agrees with BellSouth and the Public Staff that Tier 2 penalties should be used to determine a pattern of persistent disparate treatment to the CLP industry and therefore should be based on a three-month rolling average.

CONCLUSIONS

The Commission concludes that BellSouth's transactions-based approach, which places a separate economic value on each type of service being measured, is appropriate and should be adopted as the basic premise of the methodology to be used in calculating the appropriate penalties to be developed under a self-effectuating enforcement mechanism which would be sufficient to ensure compliance with the applicable performance standards. However, as experience is gained in implementing this plan, the Commission may find it necessary to modify the fee schedules in BellSouth's remedy plan so that they more closely represent the economic value of the disparity to offset any economic gain BellSouth would achieve from discriminatory behavior. Accordingly, the Commission further concludes that this portion of the plan should be revisited at the first Commission review to determine its effectiveness. Further, the Commission concludes that Tier 2 penalties should be used to determine a pattern of persistent disparate treatment to the CLP industry, and therefore, should be based on a three-month rolling average when performance continues at a substandard level for three consecutive months.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

R-ENF-2: Should there be absolute caps on remedy payments?

R-ENF-3: Should regulatory proceedings to affirm or modify remedy payments be automatically triggered when the payments exceed a certain amount?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth recommended that an absolute cap on remedy payments should be adopted. BellSouth proposed an absolute cap set at 36% of its net operating revenues, contending that this cap is consistent with those used in other states' enforcement plans that have been approved by the FCC.

CLP COALITION: The CLP Coalition opposed an absolute cap on remedy payments. Instead, the CLPs supported a procedural cap of 36% of BellSouth's revenue to be applied for Tier 1 and Tier 2 of the remedy plan. The procedural cap would establish a preset level of remedies such that when reached, BellSouth could seek regulatory review of the additional remedy amounts that are due. The procedural cap would not automatically exempt BellSouth from liability for a violation.

PUBLIC STAFF: The Public Staff agreed with BellSouth that an absolute cap should be included in the remedy plan. An annual cap of 36% of BellSouth's annual North Carolina net operating revenues, based upon the most recently reported Automated Reporting Management Information System (ARMIS) data, should be included in the SEEM.

DISCUSSION

These issues concern the matter of whether remedy payments should be subject to an absolute cap or a procedural cap whereby regulatory review proceedings to affirm or modify remedy payments could be initiated by BellSouth when the payments exceed the procedural cap.

BellSouth argued that there should be an absolute cap on the payment of penalties because an absolute cap is the only type of cap that is meaningful. BellSouth witness Varner summarized BellSouth's view of how a cap fits into the plan as follows:

> In agreeing to a voluntary enforcement plan, BellSouth or any ILEC has to balance its responsibilities to its shareholders and its customers. In this case, BellSouth's customers include both CLPs and retail customers. BellSouth should not be required to jeopardize its ability to fulfill its responsibilities to all of these groups solely for the benefit of one group, as might be the result of an un-capped plan. Again, the purpose of this voluntary enforcement plan is to prevent "backsliding" when BellSouth obtains interLATA relief in NC. The absolute cap that BellSouth proposes would equate to 36% of BellSouth's net revenue. Clearly, this is a more than adequate deterrent to "backsliding" and balances the interest of each group of stakeholders.

Witness Varner testified that an absolute cap prevents the mechanisms from spiraling out of control and is especially necessary in the early stages of the implementation of a self-executing remedy mechanism. Additionally, witness Varner pointed out that the FCC has stated that an enforcement plan is not the only means of ensuring that ILECs provide nondiscriminatory service. In particular, in the *New York - Section 271 Order*, the FCC disagreed with the assumption "that liability under the Plan must be sufficient, standing alone, to completely counterbalance Bell Atlantic's incentive to discriminate." The FCC noted in Paragraph 435 of the *New York - Section 271 Order* that, in addition to potential penalties under its Plan, "Bell Atlantic faces other consequences if it fails to sustain a high level of service to competing carriers, including: federal enforcement action pursuant to section 272(d)(6); liquidated damages under 32 interconnection agreements; and remedies associated with antitrust and other legal actions."

In similar testimony, BellSouth witness Taylor testified that BellSouth is in the position where it must provide both wholesale services to CLPs and retail services to its end-user customers as follows:

> Without a cap on . . . liability, BellSouth would have to prepare for compensation claims almost without limit. This could affect BellSouth in at least one important way, namely, compromise BellSouth's ability to utilize its resources efficiently in all possible uses, including serving retail customers. BellSouth's resources to meet its various needs are not unlimited. While delivering retail services at the desired level is both an obligation and a competitive necessity, BellSouth also has an obligation to provide wholesale services of the desired ability to its competitors. An excessive and unreasonable financial liability on one flank of its operations could clearly jeopardize BellSouth's ability to meet its goals elsewhere. The CLPs advocate what they refer to as a "procedural cap." Under this approach, when the penalties paid by BellSouth in a given year reach the procedural cap (for example, 36% of BellSouth's net operating revenues in the state), BellSouth could then initiate a proceeding before the Commission to request that it make no further payments in that year. However, as Mr. Varner testified, "the procedural cap is not really a cap at all, but rather a threshold that must be reached before the process of setting a cap begins."

Witness Taylor further testified that setting a cap of a percentage of BellSouth's net revenue would provide for an automatic adjustment of BellSouth's liability proportionally to its net revenues from service sold in North Carolina and would allow the Commission to avoid having to periodically modify a preset dollar amount.

In its Proposed Order, BellSouth stated that if one believes that a cap is appropriate, then it only makes sense to set the cap at the outset so that it can go into effect automatically, just as with every other aspect of the remedy plan. BellSouth contended that there is no point in deferring to some future time the potentially lengthy process of filing testimony and other evidence and conducting a hearing, prior to determining whether (or at what point) a real cap should be set.

Furthermore, BellSouth noted that setting an absolute cap is the only approach that is consistent with what has been done in other states, as well as by the FCC. As witness Varner testified, the FCC has approved enforcement plans for five states and in each instance has imposed an absolute cap such as the one BellSouth proposes. Thus, BellSouth asserted that in every state in which the FCC has granted Section 271 authority, there has been an absolute cap. Further, BellSouth commented that no state has employed a procedural mechanism whereby the cap (if any) would be set at some point in the future.

Although BellSouth disagreed with the concept of a procedural cap, BellSouth stated that if the Commission deems this approach necessary, BellSouth would recommend that (1) the procedural cap or threshold should be set well below what any reasonable absolute cap might be and (2) after the procedural cap is reached, penalty payments above the procedural cap should be suspended until the Commission sets the absolute cap.

The CLP Coalition is opposed to an absolute cap on remedy payments. The CLPs believe that the inclusion of an absolute cap on remedy payments decreases BellSouth's incentive to comply with required performance standards and gives BellSouth the opportunity to evaluate the cost of retaining its market share through noncompliant performance, as was stated by CLP Coalition witness Bursh. Witness Bursh argued that once the absolute cap is reached, BellSouth would no longer have an incentive to correct the deficiencies. Witness Bursh maintained that the best way for BellSouth to keep penalties in check is to provide compliant service.

Instead of an absolute cap, the CLPs proposed a procedural cap on BellSouth's liability. In its Proposed Order, the CLP Coalition explained that a procedural cap establishes a preset level of remedies that when reached, BellSouth could then seek regulatory review of the additional remedy amounts that are due. Further, the CLPs noted that the procedural cap would not automatically exempt BellSouth from liability for a violation.

The CLPs initially recommended that if a procedural cap was adopted, BellSouth should not stop Tier 1 payments to CLPs because Tier 1 payments are intended to at least partially compensate CLPs for the harm incurred because of performance failure. Further, the CLPs proposed that once the procedural cap is reached, BellSouth should continue to make Tier 2 payments into an interest-bearing registry or escrow account that earns a minimum interest rate as approved by the Commission. Thus, the CLPs asserted that BellSouth would have the burden of showing that the amount due for poor performance to the CLPs, in aggregate, was unwarranted in order to recover them. The CLPs explained that the Commission would then decide whether, and to what extent, remedies in excess of the procedural cap should be paid out. The CLPs also commented that the procedural cap should be set sufficiently high, so as not to negate the benefits of self-executing remedies.

In its Proposed Order, the CLP Coalition recommended that the Commission adopt a procedural cap of 36% of BellSouth's revenue for Tier 1 and Tier 2 of the remedy plan. In addition, the CLP Coalition stated that once the procedural cap is reached, BellSouth should be allowed to file a petition notifying the Commission that the procedural cap has been reached and that remedy payments due under Tier 1 or Tier 2 of the plan in excess of the procedural cap would be paid into an escrow account pending a decision by the Commission as to whether BellSouth should pay remedies due in excess of the cap. Further, the CLPs proposed that within 30 days, BellSouth must then file a petition seeking to suspend any further payments due under the plan and providing any information that it feels would justify the suspension of further remedy payments. The CLP Coalition also recommended that the CLPs should then have 30 days to respond to the information provided by BellSouth. Thereafter, the CLP Coalition stated that once the parties have filed their positions, the Commission or its designated representative, should then make a determination as to whether further remedy payments should be suspended or paid.

In its Proposed Order, the Public Staff contended that the procedural cap proposed by the CLPs would provide BellSouth with little protection as the penalty payments would continue for both Tier 1 and Tier 2 penalties even after the cap is reached. The Public Staff asserted that it is unfair to expect BellSouth to assume the liability that comes with an essentially unlimited compensation plan. Further, the Public Staff commented that, as the FCC has recognized, there are other legal remedies available to the CLPs and the commissions at both the federal and state level if the penalty payments ever approach the cap limit. The Public Staff noted that if disparate service were to reach this level, formal proceedings could be initiated to investigate the cause regardless of whether there is a cap. Accordingly, the Public Staff agreed with BellSouth that an absolute cap should be included in the remedy plan. The Public Staff recommended that an annual cap of 36% of BellSouth's annual North Carolina net operating revenues, based upon the most recently reported ARMIS data, should be included in the SEEM. The Public Staff stated that this cap was estimated by BellSouth to equate to over $140 million based on 1999 net revenues.

The Commission understands that under the CLP Coalition's proposal, a threshold is set which, if reached at some future point, would trigger a proceeding to determine whether payments should continue to be made. However, under such proposal, the necessary circumstances which might result in the later establishment of a real cap on BellSouth's payments in this future proceeding were not identified by the CLPs. Thus, it is likely that the CLPs would again argue in a future procedural cap proceeding that no real cap should be imposed. The Commission concludes that the procedural cap proposed by the CLPs provides BellSouth with little protection as the penalty payments would continue for both Tier 1 and Tier 2 penalties even after the cap is reached.

The Commission believes that the establishment of an absolute cap would be reasonable and consistent with the concept of a self-effectuating remedy plan. We do not believe that BellSouth's liability should be essentially unlimited as would be the case under the CLPs' proposal. BellSouth must balance its responsibilities to its shareholders and its customers. Furthermore, as the FCC has recognized, there are other legal remedies available to the CLPs and the commissions at both the federal and state level if the penalty payments ever approach the cap limit. Additionally, as was noted by the Public Staff, if disparate service were to reach this level, formal proceedings could be initiated to investigate the cause regardless of whether there is a cap.

The Commission agrees with BellSouth and the Public Staff that an absolute cap should be included in the plan. Under such a cap, BellSouth's total liability for the payment of Tier 1 and Tier 2 enforcement mechanisms would be collectively capped. The Commission believes that it is appropriate to set such cap as a specific percentage of BellSouth's net operating revenue. Since no percentage other than 36% was proposed, the Commission finds it appropriate to adopt an absolute cap of 36% of BellSouth's annual North Carolina net operating revenues, based upon the most recently reported ARMIS data. The Commission believes that an annual cap of 36%, which represented over $140 million based on 1999 net revenues, would be sufficiently high enough to maintain the enforcement plan as an effective deterrent to discriminatory service being provided by BellSouth.

CONCLUSIONS

The Commission concludes that an absolute cap on remedy payments should be adopted. The Commission concludes that the appropriate percentage cap to be included in the SEEM is an annual cap of 36% of BellSouth's annual North Carolina net operating revenues, based upon the most recently reported ARMIS data. However, the Commission acknowledges that, if disparate service were to reach this level, formal proceedings could be initiated to investigate the cause regardless of whether there is a cap.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

R-ENF-4: Should remedies be scaled in proportion to the size or market penetration of the ILEC?

R-ENF-17: Should a remedy plan include a CLP market penetration adjustment and, if so, how should such an adjustment be implemented?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth recommended that the remedy plan should not include a CLP market penetration adjustment. The market penetration adjustment proposed by the CLPs for Tier 2 penalties would have the effect of inappropriately increasing remedies under circumstances when the increase is not justified. As BellSouth witness Taylor stated in his testimony, "the essential point here is that compensation owed to CLPs for BellSouth's failure to comply with set performance standards must be proportional to the financial or economic significance of the noncompliance." Under the transactions-based remedy plan advocated by BellSouth, a small number of failed transactions results in a small penalty, and a larger number of failed transactions results in a commensurately larger penalty payment which is generally, as it should be.

CLP COALITION: The CLP Coalition remedy plan proposed the inclusion of the "n" factor in the Tier 2 remedy calculation. The "n" factor in the Tier 2 remedy calculation is a multiplier. The value of "n" depends upon CLP market penetration levels. The value of "n" decreases as the number of CLP-served lines increases. This results in Tier 2 payments decreasing as the CLP market penetration increases.

PUBLIC STAFF: The Public Staff recommended that the remedy calculations from BellSouth's proposed SEEM, which does not include a CLP market penetration adjustment, should be adopted.

DISCUSSION

This issue concerns the matter of whether or not a CLP market penetration factor, the n-factor, as proposed by the CLPs, should be implemented for adjusting Tier 2 remedies. The CLPs' PIP provides that the value of the n-factor would be determined based on the most recent data for the state and company under consideration (in this case North Carolina) relating to resold lines and UNE loops as reported in the most recent Report of Local Competition published by the FCC. Further, as stated in the CLPs' PIP, the "n" would be a multiplier for the Tier 2 consequence amount that generally takes into account the extent of competitive penetration in the state.

In its Proposed Order, BellSouth asserted that the market penetration adjustment proposed by the CLPs for Tier 2 penalties would have the effect of inappropriately increasing remedies under circumstances when the increase is not justified. BellSouth witness Taylor testified that the essential point here is that compensation owed to CLPs for BellSouth's failure to comply with set performance standards must be proportional to the financial or economic significance of such noncompliance. Said principle, in BellSouth's opinion, supports the sort of transactions-based remedy plan advocated by BellSouth. BellSouth explained that under BellSouth's approach, a small number of failed transactions results in a small penalty, and a larger number of failed transactions results in a commensurately larger penalty payment which is generally, as it should be.

BellSouth commented, in its Proposed Order, that the CLPs appear to believe that an adjustment of some sort is necessary because, under a transactions-based system, the CLPs contend that a performance failure in a situation in which there are very low levels of CLP activity will not result in sufficient penalties to make it worth BellSouth's while, economically speaking, to address performance problems. However, BellSouth noted that the CLPs have not proposed a transactions-based system. Under the CLPs' proposal, BellSouth pointed out that the same penalty applies regardless of the number of transactions, yet the CLPs have nonetheless proposed a market penetration adjustment such that adjusted (i.e., increased) penalties would apply in addition to the usual Tier 1 and Tier 2 penalties that would always apply. BellSouth asserted that the CLPs' approach creates many more (and more severe) problems than it addresses. BellSouth contended that the CLPs' proposed market penetration adjustment for Tier 2 penalties, whereby, based on the percentage of the local market that is served by BellSouth (as opposed to CLP competitors), penalties would be multiplied substantially.

In regard to the CLPs' proposed market penetration adjustment for Tier 2 penalties, BellSouth witness Taylor testified that:

> The use of market share in isolation, as a predictor or estimate of the state of competition in a market, can be particularly misleading. The real issue is whether the incumbent firm, here BellSouth, has either the incentive or the ability to exercise market *power* (e.g., restrict competitive entry and/or manipulate market prices), not market share *per se*. If other indicators confirm that BellSouth is unable, in any way, to exercise that market power, then adjusting Tier 2 remedies for BellSouth's current market share is both unnecessary and distortive. Indeed, the whole point of Tier 1 remedies is to prevent BellSouth from exercising market power, such as by raising barriers to entry for potential competitors. If Tier 1 remedies are successful at accomplishing this, then scaling Tier 2 penalties by a market penetration factor would be overkill and economically inefficient.

In its Proposed Order, BellSouth argued that there is absolutely no evidence to suggest that the comparatively low penetration levels achieved to date by CLP competitors is the result of barriers to entry attributed to BellSouth. Additionally, BellSouth explained that the CLP plan is structured so that the market penetration adjustment would apply regardless of the reason for the low penetration levels. For example, BellSouth stated that this adjustment would apply, even if the low penetration level is attributable solely to the CLPs' business plans, rather than some external factor that is impeding their attempt to enter the market. In particular, BellSouth witness Varner testified that "this adjustment will unfairly penalize BellSouth for CLP's business decisions not to include North Carolina in initial entry level strategies or to target other areas before moving to North Carolina."

Additionally, BellSouth stated that there is another problem with the CLP-proposed adjustment which was expressed by BellSouth witness Taylor, who stated that "by promoting a one way stream of compensation (whether justified or not), [the adjustment] can also create certain perverse incentives." Specifically, witness Taylor testified that:

> Even if the market share-scaled Tier 2 penalties are paid to the state and not to the CLPs themselves, there is no question that large payments would greatly reduce BellSouth's profitability and be a considerable drain on its resources. Although CLPs could benefit from BellSouth being financially weakened in this manner, ironically, CLPs would have a greater incentive to "remain small," i.e., not reduce BellSouth's market share too much. The more the *status quo* could be preserved, the more BellSouth would be in danger of making very large penalty payments.

BellSouth pointed out that any adjustment that rewards a CLP for limiting its offerings or competitive efforts necessarily discourages the development of competition. BellSouth asserted that appropriate regulatory policies should encourage increased competition and the attendant greater availability of competitive services to consumers.

BellSouth explained that under the CLPs' proposal, the "n" factor is used to multiply Tier 2 penalties whenever market penetration is relatively low. BellSouth stated that the value of "n" is set from one to 10. Accordingly, BellSouth noted that the penalties can be increased by a factor of up to 10, depending on market penetration. Thus, BellSouth pointed out that, as CLP Coalition witness Bursh testified on cross-examination, the maximum Tier 2 penalty in the CLPs' plan would be $25,000, without the multiplier. Applying the maximum "n" factor, 10, would increase this penalty to $250,000, according to BellSouth. Further, BellSouth stated that, as admitted by witness Bursh, the excessive multipliers in the CLPs' plan were set without any "market study or analysis, or other sort of documentation, to support the particular values of 'n' proposed by the CLPs." Additionally, BellSouth pointed out that although witness Bursh claimed this figure was based on "business judgment," she did not know who exercised this "business judgment," nor how they arrived at the conclusion that a maximum "n" factor of 10 is appropriate.

Finally, BellSouth contended that the CLPs' multiplier provides an unwarranted windfall of penalty payments after the plan is first implemented. Consequently, BellSouth stated that the CLPs' proposal suffers from the perverse incentives of which witness Taylor warned, it is structured to create these incentives. Furthermore, BellSouth commented that the CLPs' plan could well continue this unjustified windfall, even when robust competition is present. In the CLP plan, BellSouth explained that the CLPs' market share is determined by comparing the number of customers served through UNEs and resold lines to the total number of customers served by BellSouth and the CLPs. Thus, BellSouth asserted that to the extent a CLP serves local customers by using its own facilities, this form of competition "would not factor into [the] market penetration adjustment in any way." Further, BellSouth noted that in response to a hypothetical question, witness Bursh confirmed that if a large CLP buys a cable company and uses these facilities to serve 40% of the local market, the CLP proposal "would ignore this competition completely." BellSouth concluded that the CLPs' proposed adjustment represents an attempt to provide a windfall of excessive penalties for which there is no justification and recommended that this aspect of the CLPs' plan be rejected.

As previously discussed in the Evidence and Conclusions for Finding of Fact No. 4, concerning R-ENF-1 and R-ENF-7, under the CLP Coalition's PIP, payments for Tier 2 violations are paid if the difference in any given month between BellSouth's performance for itself or affiliates and that which it provides to the aggregate of CLPs exceeds the gap specified in the CLP plan. Further, under the CLPs' PIP, penalties for Tier 2 violations would also increase depending on the severity, with parameters defined for those violations that are "market impacting" and those designated as "market constraining". Additionally, the CLPs also proposed that a "n" factor be applied as a multiplier to the basic penalty amount. Of course, it is this "n" factor that is being addressed in this immediate discussion.

The CLP Coalition asserted that the remedy plan should include a CLP market penetration adjustment, i.e., the "n" factor should be included in the Tier 2 remedy calculation. The CLP Coalition stated that the "n" factor in the Tier 2 remedy calculation is a multiplier.

According to the CLPs, the value of "n" depends upon CLP market penetration levels. In its Proposed Order, the CLP Coalition explained that the value of "n" decreases as the number of CLP-served lines increases, such that the Tier 2 payments decrease as the CLP market penetration increases.

In its Proposed Order, the CLP Coalition asserted that the market penetration adjustment is designed to provide BellSouth with an extra incentive to provide CLPs with compliant support when CLP market penetration is very low. The CLP Coalition commented that witness Bursh admitted that the CLPs did not perform an analysis or study in determining the values associated with the "n" factor. However, the CLP Coalition pointed out that witness Bursh testified that if the remedy amounts were found to be too high, the quadratic function used to calculate remedies in the CLP plan could easily be adjusted. Consequently, the CLP Coalition stated that presumably, the "n" factor could also be adjusted.

In its Proposed Order, the CLP Coalition stated that while recognizing that the CLPs market penetration adjustment does not take the CLPs' business plans into effect, the Commission should conclude that in order to ensure parity and benchmark performance, where CLPs order volumes of advanced and emerging services are low, a market penetration adjustment should be adopted. The CLP Coalition stated that while not perfect, the CLP proposal can easily be implemented and adjusted if the remedy amounts prove to be onerous. The CLP Coalition asserted that the remedy payments for Tier 2 measures are designed to combat industry affecting discrimination by BellSouth. Further, in its Proposed Order, the CLP Coalition recommended that the Commission review the impact of the market penetration adjustment component of the plan after one month of data is available. In addition, the CLP Coalition stated that should the remedies prove to be excessive as compared to BellSouth's performance, the Commission should then take steps to revise the market penetration adjustment. Consequently, in order to avoid any prejudice to BellSouth, the CLP Coalition recommended that all Tier 2 remedies, due for the first month the plan is in effect, be held in escrow until the Commission completes its review.

In its Proposed Order, the Public Staff noted that according to CLP Coalition witness Bursh, under the CLPs' PIP, penalty calculations for Tier 2 would be subject to a market penetration adjustment, i.e., each Tier 2 penalty would be multiplied by the "n" factor that would range from one to 10. The Public Staff commented that this factor would be based on the percentage of lines serviced by CLPs in North Carolina and stated that according to BellSouth, the factor would currently be eight. The Public Staff recommended that the remedy calculations from BellSouth's proposed SEEM should be adopted. As noted previously in the discussion under the Evidence and Conclusions for Finding of Fact No. 4, regarding R-ENF-1 and R-ENF-7, the Public Staff agreed with BellSouth that the purpose of the remedy plan should be to estimate the economic impact of the disparate service being measured. In that prior discussion, it was also noted that the Public Staff agreed with BellSouth that Tier 2 penalties should be used to determine a pattern of persistent disparate treatment to the CLP industry and should be based on a three-month rolling average.

The Commission believes that the use of the n-factor, i.e., the market penetration adjustment, could cause the penalties levied against BellSouth to be increased under circumstances where such an increase would not be justified. As set forth in the CLPs' PIP, the value of the n-factor, ranging from one to 10, would be related to the resulting calculation for BellSouth's most current North Carolina data reported to the FCC as follows: (resold lines + UNE loops) ÷ (total switched lines). The proposed percentage ranges of the ratio of lines provided to CLPs ÷ total ILEC and CLP lines and the corresponding values of "n" are as follows:

>50%	n=0
>40%≤50%	n=1
>30%≤40%	n=2
>20%≤30%	n=4
>10%≤20%	n=6
>5%≤10%	n=8
0%≤5%	n=10

Consequently, the Commission recognizes that to the extent that a CLP serves local customers by using its own facilities, this form of competition would be entirely ignored under the proposed market penetration adjustment. The Commission questions the reasonableness of the market penetration adjustment proposal, as it was developed by the CLPs without any study or analysis being performed, and, in fact, the CLP Coalition recommended, as stated in its Proposed Order, that the impact of the market penetration adjustment factor should be reviewed by the Commission after just one month of data is available to then determine if the remedies are excessive to the point that the market penetration adjustment should be revised.

Furthermore, the Commission does not believe that the market penetration adjustment is directly tied to the economic significance of the noncompliance, since the same penalty applies regardless of the number of transactions and, in fact, the penalty amount would only decrease if the CLPs' market share increases by a certain percentage level. The value of the n-factor would currently be eight and it would not decrease until the CLPs' market share increases to more than 10%. Thus, under the CLPs' PIP, if a Tier 2 failure for a measure is classified as "market constraining", the resulting penalty for that measure would be $200,000 (8 times $25,000), which is a large penalty assessment resulting mainly because the CLPs have less than 10% of BellSouth's market share. The Commission does not agree with the application of a market penetration adjustment which would apply regardless of the reason for the low penetration levels, such as when a low penetration level is due to the CLPs' business plans. As was suggested by BellSouth, the market penetration adjustment could also lead to the perverse incentive of encouraging CLPs not to expand, in order not to reduce BellSouth's market share too much, such that BellSouth would have to make larger penalty payment amounts.

Based upon the foregoing, the Commission agrees with BellSouth and the Public Staff that the remedy plan should not include the CLPs' proposed market penetration adjustment. The Commission believes that the CLPs' proposal for the use of a market penetration adjustment resulting in increasing the penalties that would apply, in addition to the usual Tier 1 and Tier 2 penalties that would apply, is unreasonable and inappropriate, and thus, should be rejected by the Commission.

CONCLUSIONS

The Commission concludes that the penalty plan should not include the CLPs' Tier 2, market penetration adjustment.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

R-ENF-5: Whether the Commission has the authority to order implementation of a self-executing remedy plan without BellSouth's consent?

POSITIONS OF PARTIES

BELLSOUTH: Because BellSouth has voluntarily consented to subject itself to penalty payments under its SEEM, the Commission need not reach the legal issue of whether it has authority to impose involuntary penalties. BellSouth would not reject out of hand any reasonable self-effectuating remedy proposal ordered by the Commission, even if it deviates from that to which BellSouth has consented. However, the CLP enforcement mechanism is bad and ought to be rejected.

CLP COALITION: The Commission has the legal authority to order the implementation of a self-executing remedy plan under the Telecommunications Act of 1996 with or without BellSouth's consent in order to effectuate BellSouth's obligation to provide nondiscriminatory access to unbundled network elements under 47 USC 251(c)(3). Moreover, Chapter 62 confers ample authority for the Commission to impose such a plan. *See*, e.g., G.S. 62-2(b), 62-30, 62-31.

PUBLIC STAFF: The Public Staff noted that BellSouth witness Varner had stated that the Commission cannot order BellSouth to adopt a self-executing remedy plan without its consent because such a plan is not required by the Telecommunications Act or any FCC rule. However, witness Varner conceded that the FCC had ruled that enforcement mechanisms are required for Section 271 relief. The Public Staff argued that a central part of any performance measurement plan is an acceptable self-executing remedy plan.

DISCUSSION

With respect to this issue, BellSouth has expressed doubt as to the Commission's authority to impose an involuntary self-executing remedy plan; the CLPs have no such doubts; and the Public Staff believes that such a plan, whatever its origins, is absolutely central, especially in light of Section 271 considerations.

The Commission believes that the practical issue is not whether there should be a self-executing remedy plan--all parties appear to accept this premise--but what it should look like and whether it is reasonable. BellSouth has stated that it will consent to a "reasonable" remedy plan, even if it is not identical to that which it has proposed.

The Commission finds that the remedy plan set out elsewhere is in fact a reasonable one and that BellSouth is required to adopt it. It is a linchpin in ensuring the compliance of BellSouth in the provision of interconnection to competitors, both as a general matter and as part of the Section 271 approval process.

CONCLUSIONS

The Commission concludes that the remedy plan set out hereiń is a reasonable one, and BellSouth is required to adopt it.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

R-ENF-6: How should the penalty plan be administered?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth noted that the differences between the BellSouth penalty plan and that of the CLPs generally fall into three categories: (1) the "structural" differences, such as whether penalties are to be paid on a per transaction or a per measurement basis and the amount of penalties; (2) the decision as to which measurements should be subject to penalties; and (3) how to structure and implement penalties to do something other than make payments directly to CLPs that have received disparate treatment (i.e., Tier 2 penalties), BellSouth favored its own proposal.

CLP COALITION: The CLP Coalition noted that there were some areas of agreement between the CLP Coalition and BellSouth. For example, both parties agreed on a two-tier remedy structure with Tier 1 remedies being paid to CLPs and Tier 2 penalties to the State; both parties agree on the use of retail analogs and the use of benchmarks where no retail analog is available; both parties also agree that a statistical methodology is necessary for determining compliance with retail and that there should be adjustments for sample size although they disagree as to the precise adjustments to be made. Other matters remain unresolved, such as whether the remedy plan should be measurement-based or transaction-based, and the use of various statistical methodologies.

PUBLIC STAFF: The Public Staff did not address this issue in its Proposed Order.

DISCUSSION

This issue is a highly generic one that can only be answered by reference to the particulars that compose it and are addressed elsewhere herein. To the extent that there is general, or even specific, agreement between the parties, these recommendations from the parties should be accepted. However, as to matters in dispute, these are addressed in the context of other issues and are dealt with there.

CONCLUSIONS

The Commission concludes that the penalty plan should be administered as set out elsewhere herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

R-ENF-8: By what increments should industry-aggregate remedies escalate for chronic ILEC nonperformance?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth has proposed to deal with chronic performance failures through the Tier 2 penalties in its SEEM proposal. Also, under BellSouth's proposal, the Tier 1 "penalty per transaction increases each consecutive month that the performance standard is not met, up through month 6."

CLP COALITION: Tier 2 of the CLP plan does not provide for escalated remedies for chronic ILEC nonperformance at the industry-aggregate level. The CLP plan addresses chronic ILEC nonperformance in Tier 1. The CLPs' plan calls for a $25,000 payment to the CLP for "chronic" or recurring performance failures. The $25,000 payment is levied beginning with the third month that a particular submeasure is missed. The $25,000 monthly payment continues for every month until the performance for that submeasure returns to the "compliant" level. One month of compliant performance resets the clock.

PUBLIC STAFF: The Public Staff recommended that the remedy calculations from BellSouth's proposed SEEM should be adopted.

DISCUSSION

BellSouth has proposed to deal with chronic performance failures for the CLP industry through the Tier 2 penalties in its SEEM proposal. For an individual CLP, BellSouth's SEEM proposal provides a Tier 1 enforcement mechanism that provides for a Tier 1 penalty per transaction which increases each consecutive month that the performance standard is not met, up through Month 6 and failures beyond Month 6 will be subject to Month 6 fees.

BellSouth witness Varner testified that the increments by which remedies should escalate for chronic substandard performance that affects more than one CLP are already reflected in Tier 2 of the SEEM. According to witness Varner, Tier 2 is triggered when performance continues at a substandard level over a three-month period. Witness Varner testified that at least three-months of data should be used to determine if there is a pattern of persistent disparate treatment to the CLP industry, as many factors affect performance, the use of one month's data would not be sufficient to determine persistent disparate treatment. Witness Varner stated that these payments are made in addition to applicable Tier 1 payments. According to witness Varner, when there is an indication of materially disparate treatment at the CLP level for a Tier 2 submetric for three consecutive months, the affected volumes for the three-month period will be averaged and multiplied by the appropriate penalty fee per item to arrive at the amount of the remedy. As an example, witness Varner provided the following:

> . . . consider the 4-month period February, March, April, and May. Assume that the CLP industry received service below the standard for a Tier 2 sub-metric for each of these months. Using the three month averaging, the affected volumes for the months of February, March and April would be averaged and multiplied by the appropriate Tier 2 penalty per item to arrive at a remedy amount. Then the affected volumes for the months of March, April and May would be averaged and multiplied by the appropriate Tier 2 penalty to arrive at the next month's remedy amount.

In its Proposed Order, BellSouth stated that the CLPs propose to address chronic failures by adding an additional penalty of $25,000 per month to Tier 1 penalties that otherwise apply, beginning with the third month of failure and continuing until the standard for the measurement is met. BellSouth argued that the problem with this approach is that it suffers from the same flaws as the CLP plan in general – the penalty is assessed on every submetric, there are too many submetrics to assess, and the penalty thresholds are too low. Accordingly, BellSouth contended that this aspect of the CLP plan merely compounds the other deficiencies of the plan by layering one more groundless set of penalties on those already payable under the CLP-proposed plan. BellSouth asserted that chronic nonperformance by BellSouth is best addressed through BellSouth's penalty proposal.

In its Proposed Order, the CLP Coalition stated that Tier 2 of the CLPs' PIP does not provide for escalated remedies for chronic ILEC nonperformance at the industry-aggregate level. Under the CLPs' PIP proposal, the Tier 2 penalties would be assessed monthly. According to witness Bursh, Tier 2 addresses the remedies for noncompliant performance delivered to the CLP industry as a whole. The CLP Coalition commented that its plan addresses chronic ILEC nonperformance in Tier 1. Specifically, the CLPs' PIP states:

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

Accordingly, the CLP Coalition stated that the $25,000 payment is levied beginning with the third month that a particular submeasure is missed. Also, the CLPs commented that the $25,000 monthly payment continues for every month until the performance for that submeasure returns to the "compliant" level and one month of compliant performance resets the clock.

In its Proposed Order, the CLP Coalition stated that it does not appear that either Party in this proceeding is proposing that industry-aggregate remedies escalate for chronic ILEC nonperformance. Further, the CLP Coalition asserted that the Commission should adopt the CLPs' methodology for calculating remedies and, in doing so, chronic nonperformance by BellSouth would be addressed in Tier 1. Accordingly, the CLP Coalition stated that no additional remedies for chronic nonperformance by BellSouth should apply to industry level remedies in Tier 2.

In its Proposed Order, the Public Staff recommended that the remedy calculations from BellSouth's proposed SEEM should be adopted. The Public Staff stated that it agrees with BellSouth that Tier 2 penalties should be used to determine a pattern of persistent disparate treatment to the CLP industry and therefore should be based on a three-month rolling average. Additionally, the Public Staff noted that the fee schedules in BellSouth's remedy plan are based on business judgment. Consequently, the Public Staff pointed out that as the Commission and the Parties gain experience in implementing this plan, it may be necessary to change these estimates so that they more closely represent the economic value of the disparity to offset any economic gain BellSouth would achieve from discriminatory behavior.

The Commission understands that under the CLPs' proposal, in Tier 1, the remedy payments for chronic performance failures result in an initial penalty of $25,000 being levied beginning with the third month that a particular submeasure is missed and continues with monthly payments of $25,000 every month thereafter, until the performance for that submeasure returns to the compliant level. Also, under Tier 2, the CLPs proposed that penalties be assessed monthly for noncompliant performance delivered to the CLP industry as a whole.

The Commission understands that under BellSouth's proposal, Tier 2 enforcement mechanisms are triggered by three consecutive monthly failures in which BellSouth's performance is out of compliance or does not meet the benchmarks for the aggregate of all CLP data as calculated by BellSouth for a particular Tier 2 enforcement measurement element. When this occurs, the affected volumes for the three-month period will be averaged and multiplied by the appropriate penalty fee per item to arrive at the amount of the remedy. The Tier 2 remedy amounts will be based on a three-month rolling average and the payments will be made in addition to applicable Tier 1 payments. Additionally, BellSouth's SEEM proposal also provides for an individual CLP, a Tier 1 enforcement mechanism that provides for a Tier 1 penalty per transaction which increases each consecutive month that the performance standard is not met, up through Month 6 and failures beyond Month 6 will be subject to Month 6 fees.

Based upon the foregoing, the Commission believes that BellSouth's proposal to deal with chronic performance failures for the CLP industry through the Tier 2 penalties in its SEEM proposal based on a three-month rolling average, using the affected volumes averaged and multiplied by the appropriate Tier 2 penalty per item to arrive at a remedy amount is more appropriate and reasonable than the CLPs' proposal in this regard. However, as the Commission and the Parties gain experience in implementing this plan, it may be necessary to modify the fee schedules in BellSouth's remedy plan so that they more closely represent the economic value of the disparity to offset any economic gain BellSouth would achieve from discriminatory behavior. Accordingly, this portion of the plan should be revisited at the first Commission review to determine its effectiveness.

CONCLUSIONS

The Commission concludes that BellSouth's proposal to deal with chronic performance failures for the CLP industry through the Tier 2 penalties in its SEEM proposal, based on a three-month rolling average, using the affected volumes averaged and multiplied by the appropriate Tier 2 penalty per item to arrive at a remedy amount, is reasonable and should be adopted. However, as experience is gained in implementing this plan, the Commission may find it necessary to modify the fee schedules in BellSouth's remedy plan so that they more closely represent the economic value of the disparity to offset any economic gain BellSouth would achieve from discriminatory behavior. Accordingly, the Commission further concludes that this portion of the plan should be revisited at the first Commission review to determine its effectiveness.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

R-ENF-9: What levels of severity should be recognized for the purposes of implementing escalated remedies?

POSITIONS OF PARTIES

BELLSOUTH: The severity approach to escalating penalty payments, as recommended by the CLPs, is inappropriate. As BellSouth witness Varner testified, "the severity approach is unnecessary and overly complicated." Applying this approach could require the Commission to set multiple benchmarks or analogs, and "there is not enough experience to make such fine distinctions in performance."

CLP COALITION: The levels of severity recognized in the remedy plan should be those reflected in the CLPs' remedy calculation. Tier 1 of the CLP plan has three categories of violations, depending upon the size of the gap between the performance BellSouth provides for itself, or its affiliates, and the performance it provides to CLPs. Once a submeasure failure is identified, the calculated remedy should be a function of the severity of the failure as measured by the magnitude of the modified z-statistic. The severity of performance is determined based upon the ratio of the z-score to the balancing critical value. When the benchmark serves as the performance standard, the measurement establishes a performance failure directly and assesses the degree to which performance departs from the standard. As with measurements that are judged against the parity standard, those compared to a benchmark standard should be subject to additional consequences as the performance becomes increasingly worse compared to the benchmark.

PUBLIC STAFF: The Public Staff recommended that the remedy calculations from BellSouth's proposed SEEM should be adopted.

DISCUSSION

This issue concerns the matter of whether remedy penalties should be established based on the severity approach proposed by the CLPs. Under such proposal, the consequences for noncompliant performance under Tier 1 of the CLP plan have three categories of failures: basic, intermediate, and severe; and the remedy payments increase with the level of severity.

In its Proposed Order, BellSouth stated that this issue appears to raise the question of whether penalties should, in BellSouth witness Varner's words, "be based on the degree of difference between the standard and the level of performance." Witness Varner testified that "the severity approach is unnecessary and overly complicated." BellSouth commented that applying this approach could require the Commission to set multiple benchmarks or analogs, and "there is not enough experiençe to make such fine distinctions in performance."

BellSouth asserted that the CLPs have embraced the idea of increasing penalties with the severity of the failure because this provides them with another opportunity to inflate penalties. BellSouth commented that, under the CLPs' penalty proposal, labeling a failure "severe" allows the CLPs to increase the penalty payment by a factor of 10. In its Proposed Order, BellSouth stated for example, that under the CLP plan, if a benchmark for one measure is set at 95%, then performance by BellSouth at the 94.99% level prompts a $2,500 penalty. While, according to BellSouth's Proposed Order, "performance by BellSouth at the 90% level constitutes a 'severe' failure and prompts a $25,000 Tier 1 penalty and at $200,000 Tier 2. Thus, a 4.9% decrease in performance (i.e., an increase in the severity of the failure) provides the nominal justification for increasing Tier 1 and Tier 2 penalties by a factor of 10."

BellSouth also contended that the level of the CLP benchmarks is hard to square with any reasonable assessment of what should constitute a severe failure. Further, BellSouth pointed out that WorldCom witness Kinard admitted on cross-examination that a number of the CLP-proposed benchmarks are set at 100%, i.e., absolute perfection. Based upon its review of page 15 of Exhibit CLB-1 (the CLPs' PIP) to witness Bursh's testimony, BellSouth noted that for benchmarks, a severe failure is determined by plugging the benchmark in question into a formula, "worse than (2B-100)%." BellSouth stated that the result is: 2 x 100% = 200%, minus 100% = 100%. Thus, BellSouth asserted that when there is a 100% benchmark in the CLP plan, then performance at any level below 100% is a severe failure, which prompts a $25,000 penalty under Tier 1 and a $200,000 penalty per measure under Tier 2. Accordingly, BellSouth argued that the entire concept of "severe" failures has been turned on its head by the CLPs. BellSouth recommended that the "severity" approach be rejected by the Commission.

Further, BellSouth witness Taylor testified that a statistical decision rule should not be used to determine the severity of the violation for purposes of setting remedies. Witness Taylor explained that the z-score and similar test statistics only indicate whether a particular statistical hypothesis is true or false, not how true or how false or what the economic significance of a given deviation from the null hypothesis might be. Thus, witness Taylor stated that a statistical decision rule like the z-score would only provide an absolute diagnosis, not a relative one and should not be used for setting remedies. Witness Taylor also provided an example explaining the limitation of the z-score for determining severity and setting remedies as follows:

> Suppose a z-score is computed for the same performance metric in two successive months, and in both months the outcome (an observed departure from parity) is found to be statistically significant. Next, suppose the z-score in the second

> month is twice as distant from a pre-specified critical value than that in the first month. Can it be inferred that the economic significance of the observed departure from parity is twice as great in the second month as in the first month, or that the penalty should be twice as large in the second month? The answer, in general, is "no." The reason is that the z-score has several ingredients (e.g., the mean performance when BellSouth serves itself, the mean performance when BellSouth serves the CLP, the standard deviations for both, and the number of measurements made in each case). Changes in any of these ingredients can influence the realized value of the z-score. Therefore, a z-score that is twice as distant from a critical value than another could easily be so for reasons other than simply that one of the performance means is twice as large as the other. For these reasons, it is improper to use the same statistical decision rule that determines whether or not an outcome is statistically significant to also compare the economic significance of different outcomes or set remedies.

Witness Taylor asserted that penalties should be based on economic factors. While recognizing that both plans are arbitrary, witness Taylor argued that the CLP plan is more so, because it relies on statistical rather than economic criteria to determine the severity of a disparity and it treats all transactions or metrics alike by failing to link the size of the penalty to the likely economic harm resulting from a disparity. Further, witness Taylor contended that gaming could result if economic significance was not factored into the plan. Witness Taylor explained that one example of the kind of gaming that could arise when the penalty set for a performance disparity is unrelated to the financial importance of the disparity is a class of actions described as "moral hazard". According to witness Taylor, the prospect of payments in excess of amounts necessary for deterrence could trigger moral hazard-based behavior in the following ways: reward a lack of cooperation, maximize opportunities for unearned income by CLPs, discourage investment by CLPs, promote inefficient entry, and encourage entrapment by CLPs. Witness Taylor testified that the best protection against gaming is to "de-link" the size of penalties for specific performance disparities from the statistical methodology used to test for those disparities.

In its Proposed Order, the CLP Coalition argued that the levels of severity recognized in the remedy plan should be those reflected in the CLPs' remedy calculation. The CLPs explained that Tier I of the CLP plan has three categories of violations: basic, intermediate, and severe.

For Tier 1 measures with retail analogs, CLP Coalition witness Bursh testified that each measure is statistically tested for parity. Witness Bursh explained that if a submeasure fails the statistical test, a formula is used to calculate the remedy payment based on the magnitude of the modified z-statistic. Witness Bursh stated that the form of consequences as a function of severity is accomplished by the use of a quadratic function of the measured modified z-score to the balancing critical value. In its Proposed Order, the CLP Coalition commented that this penalty ranges from a minimum of $2,500 to a maximum of $25,000 per failed measure.

For Tier 1 measures with benchmarks, CLP Coalition witness Bursh testified that there are no statistical tests needed or applied to benchmark measures, instead BellSouth either passes of fails with degrees of severity. Witness Bursh explained that the measurement establishes a performance failure directly and assesses the degree to which performance departs from the standard. Witness Bursh stated that, as with measurements that are judged against a parity standard, those compared to a benchmark standard should also be subject to additional consequences as the performance becomes increasingly worse compared to the benchmark, i.e., a penalty is assessed when the benchmark standard is not met and this penalty increases as the actual performance deviates further and further from the benchmark. According to witness Bursh, these penalties also would vary from a minimum of $2,500 to a maximum of $25,000 per failed measure.

In its Proposed Order, the Public Staff recommended that the remedy calculations from BellSouth's proposed SEEM should be adopted. As noted previously in the discussion under the Evidence and Conclusions for Finding of Fact No. 4, regarding R-ENF-1 and R-ENF-7, the Public Staff agreed with BellSouth that the purpose of the remedy plan should be to estimate the economic impact of the disparate service being measured. In that prior discussion, it was also noted that the Public Staff concluded that transactions-based payments are the most equitable method to compensate CLPs because the penalties are based on the number of transactions in which disparate service occurred. Accordingly, the Public Staff stated that BellSouth's plan more realistically estimates the economic harm that would result from performance disparities. In its Proposed Order, the Public Staff stated that BellSouth's plan correctly assesses penalties according to the type of measure since the impact of these measures on the CLPs will vary and increases that penalty level according to duration of the noncompliant service.

The Commission is not convinced by the evidence presented that the CLP Coalitions' severity approach, which assesses increasing penalty payments with a categorization of failures as basic, intermediate, or severe, is reasonable and appropriate for determining the economic significance of such performance failures. As was pointed out by BellSouth "it is improper to use the same statistical decision rule that determines whether or not an outcome is statistically significant to also compare the economic significance of different outcomes or set remedies" and, as discussed herein above, when there is a 100% benchmark in the CLP plan, then performance at any level below 100% is a severe failure, which prompts a $25,000 penalty under Tier 1 which seems unjustifiable and unreasonable. Under BellSouth's SEEM proposal, severity is considered in the Tier 1 enforcement mechanism that provides for a Tier 1 penalty per transaction which increases each consecutive month that the performance standard is not met, up through Month 6 and failures beyond Month 6 will be subject to Month 6 fees. When this occurs, the affected volumes for the CLP are multiplied by the appropriate penalty fee per item to arrive at the amount of the remedy. Additionally, under BellSouth's proposal, as previously discussed in the Evidence and Conclusions for Finding of Fact No. 9, relating to R-ENF-8, there are also Tier 2, industry-aggregate remedies for chronic ILEC nonperformance in addition to applicable Tier 1 payments. Based upon the foregoing, the Commission agrees with BellSouth and the Public Staff that BellSouth's plan in this regard more realistically estimates the economic harm that would result from performance disparities. Consequently, the Commission rejects the severity approach proposed by the CLPs for Tier 1 remedy payments.

CONCLUSIONS

The Commission finds it appropriate to reject the severity approach proposed by the CLPs for Tier 1 remedy payments and concludes that the Tier 1 remedy calculations from BellSouth's proposed SEEM should be adopted. However, as experience is gained in implementing this plan, the Commission may find it necessary to modify the fee schedules in BellSouth's remedy plan so that they more closely represent the economic value of the disparity to offset any economic gain BellSouth would achieve from discriminatory behavior. Accordingly, the Commission further concludes that this portion of the plan should be revisited at the first Commission review to determine its effectiveness.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

R-ENF-10: What is the appropriate level of disaggregation?

POSITIONS OF PARTIES

BELLSOUTH: The level of disaggregation represented in BellSouth's April 23, 2001 SQM, as set forth in Exhibit AJV-1 attached to witness Varner's direct testimony, is appropriate. If the Commission adopted the CLP Coalition's extreme degree of disaggregation, the resulting plan would be impossible to implement in any timeframe.

CLP COALITION: BellSouth's metrics do not provide sufficient disaggregation. Disaggregation should be required, in appropriate cases, by:

(1) Geography;
(2) Interface types;
(3) Pre-order query type;
(4) Product;
(5) Service order activity;
(6) Volume category;
(7) Trouble type;
(8) Trunk design and type;
(9) Maintenance and repair query type; and
(10) Collocation category.

Specifically, BellSouth's metrics should be disaggregated in accordance with WorldCom Exhibit KK-C, the CLP Composite Exhibit 3, and the CLP Coalition's June 25, 2001 Statement of Position on Disaggregation.

PUBLIC STAFF: The Commission should decline to adopt the disaggregation proposal offered by the CLP Coalition. However, where BellSouth has been required to incorporate disaggregation levels into the Georgia SQM that are more detailed than those in the North Carolina SQM, BellSouth should add the additional Georgia disaggregations, unless they are related to products, services, interfaces, or situations that are unavailable in North Carolina or inapplicable to BellSouth's North Carolina operations.

DISCUSSION

According to the Parties, disaggregation is the breaking down of performance reporting data into specific categories such as geographic location or product type.

BellSouth stated in its Proposed Order that the issue of the appropriate level of disaggregation is, with the possible exception of penalty amounts and the system to apply penalties, the single issue of greatest practical importance in this docket. BellSouth maintained that in principle, both sides agree that the measurement categories should be broken down to a level that will allow meaningful direct comparisons between the performance BellSouth gives its retail customers and the performance BellSouth provides to CLPs and their customers. BellSouth noted that as to precisely how to implement this principle, the Parties differ drastically.

BellSouth noted that its proposed measurements are disaggregated into **1,200 submeasures**. BellSouth stated that it believes that its proposed level of disaggregation, which is comparable to what was adopted in Georgia and Louisiana, is more than adequate to make meaningful comparisons for the purpose of determining whether BellSouth is providing service at parity.

BellSouth noted that the CLP Coalition is proposing disaggregation based on 10 separate categories and that not every disaggregation category would apply to every measurement in the CLP Coalition proposal. However, BellSouth asserted, many if not most of the measurements would have multiple types of disaggregation applied to them. BellSouth maintained that this would result in the number of smaller measurements, or submetrics, expanding exponentially. BellSouth commented that the CLP Coalition plan would involve disaggregating a given measure by a certain number, then multiplying that number by a second number (representing a second disaggregation category), and then, in some instances, multiplying the result again and again until there are potentially thousands of submetrics for each measurement.

BellSouth noted that its witness Varner gave a specific example of how disaggregation would affect one particular measure – Mean Held Order and Distribution Interval. BellSouth commented that the CLP Coalition proposes that this category be disaggregated by 41 types of products, 9 levels of geography, 3 levels of volume, 5 types of service order activity, and 3 categories of facilities, load, and other. BellSouth noted that witness Varner, by performing this calculation, demonstrated that under the CLP Coalition plan for this single measurement, the proposed level of disaggregation would produce more than 16,000 submeasures which witness Varner said "is absurd".

BellSouth contended that the fact that a single measure would be broken down into so many submeasures under the CLP Coalition's proposed plan prompts the question of how many total submeasurements there would be under the CLP Coalition plan in the aggregate. BellSouth argued that the answer, based on the record of evidence, is that no one knows. BellSouth maintained that it appears, however, based on the most conservative estimate, that there are **more than 330,000 submeasures**.

BellSouth noted that at the same time, CLP Coalition witness Kinard claimed at the hearing that the CLP plan has 2,700 submeasures. BellSouth mentioned that witness Kinard admitted that this number was an estimate and that the estimate changed in the 24 hours before she took the witness stand. BellSouth also mentioned that witness Kinard agreed that she was not sure that all of the CLPs concurred in the estimate of 2,700 submeasures.

BellSouth argued that even if one could ignore the uncertainty of witness Kinard that her estimate reflects the CLPs' wishes, the way she arrived at the estimate raises even greater reason for doubt. BellSouth noted that witness Kinard admitted that her estimate was based on applying disaggregation in a way that varied from the disaggregation proposed by the CLPs in the Final Task Force Report. BellSouth commented that witness Kinard admitted that her estimate was based on disaggregation that varied from the disaggregation specified in her Exhibit KK-C wherein Exhibit KK-C applies product level disaggregation to ordering measures and witness Kinard's estimate does not. Further, BellSouth contended, Exhibit KK-C indicates product disaggregation by 41 products while in witness Kinard's estimate, even when she disaggregated by product, the number used is always less than 41. During cross-examination, witness Kinard agreed that in her estimate, she used less than 41 product level disaggregations every time.

BellSouth also argued that witness Kinard's estimate treats disaggregation by geography in a way that is totally arbitrary. BellSouth noted that in her testimony, witness Kinard states that measures should be disaggregated by geography and specifically that this should be done by Metropolitan Statistical Area (MSA). BellSouth stated that in North Carolina, there are seven MSAs in BellSouth's service area and that CLPs are collocated in every one. BellSouth further noted that witness Kinard testified that CLPs would want a separate disaggregation to reflect activity in rural areas not included in an MSA and that the CLPs would also want the state aggregate results to be reported. BellSouth maintained that this means that there are a total of nine geographic areas that would be used for calculating disaggregation. BellSouth noted that in witness Kinard's estimate, she used three geographic areas and stated that it was only a guess. BellSouth noted that it is clear that witness Kinard's guess would only be accurate if there were no CLP activity in the MSAs witness Kinard left out of her analysis which she identified as Asheville, Hickory/Morganton/Lenoir, Goldsboro, and Wilmington. However, BellSouth asserted, this is not the case.

BellSouth argued that the result of witness Kinard's approach is obvious — that witness Kinard has grossly understated the number of submeasures in the CLP Coalition plan. BellSouth gave an example using three geographic zones. BellSouth stated that witness Kinard estimated that there are 945 submeasures for measurement P-4 Average Completion Interval. BellSouth stated that if witness Kinard's calculation is duplicated, but eight geographic areas are substituted for three (a conservative number since the CLPs really seek geographic disaggregation by nine areas), measure P-4 has 2,540 submeasures. BellSouth noted that witness Kinard admitted that this is a greater number of submeasures than she had earlier represented there were in the entire CLP Coalition plan.

BellSouth argued that given all of this information, it is clear that the CLP Coalition has understated the number of submeasures in its plan and has done some rather creative calculations to this end. BellSouth maintained that in reality, the CLP Coalition plan would result in somewhere in excess of 300,000 submeasures for each CLP and millions of submeasures for all CLPs in the state. BellSouth further argued that the evidence demonstrates that the CLP Coalition has made a proposal so vague and undefined that it is impossible to know what would be required by the CLP Coalition plan when or if the details were sorted out at some future date.

BellSouth asserted that the most compelling reason for the Commission to reject the CLP Coalition plan is that it appears to be impossible to implement. BellSouth noted that as witness Varner testified, there are 60 CLPs certified in North Carolina and even under a conservative assessment of the CLP Coalition plan, BellSouth would have to track and report information for over 20 million submeasures every single month (330,000 measures x 60 CLPs = 19.8 million submeasures plus 330,000 statewide average submeasures).

BellSouth commented that witness Kinard admitted during cross-examination that no state commission has adopted in its entirety the CLP Coalition proposal for disaggregation. BellSouth also noted that witness Kinard agreed that no one, anywhere, has even attempted to implement the CLP plan in its entirety. Nevertheless, BellSouth asserted, witness Kinard initially responded to a question as to whether the CLP Coalition plan could even be implemented by saying that she assumes it could be. BellSouth noted that witness Kinard then admitted that she had testified in a previous proceeding in Florida that she did not know whether the CLP Coalition plan could even be implemented.

BellSouth recommended that the Commission find that BellSouth has proposed a reasonable plan that is calculated to accomplish the task that performance measurement plans are intended to do which is to detect discriminatory performance. BellSouth maintained that the CLP Coalition disaggregation proposal is simply a monster: impossible to implement, impossible to monitor, and calculated only to prevent BellSouth from obtaining interLATA relief in North Carolina. BellSouth proposed that the Commission reject the CLP Coalition disaggregation plan.

BellSouth witness Varner stated in direct testimony that BellSouth is proposing disaggregating its products into 21 categories while the CLP Coalition is proposing 38 separate levels of disaggregation for its product categories.

BellSouth witness Varner further asserted that the transactions that would be captured by the CLP Coalition's proposed additional levels of disaggregation are already reflected in the levels of disaggregation that BellSouth already reports. Witness Varner noted that an example of this is the xDSL grouping that includes all loops that provide digital subscriber line services to CLPs. Witness Varner stated that asymmetric digital subscriber line (ADSL), high speed digital subscriber line (HDSL), and unbundled copper loop (UCL) services are all digital line services that are ordered, engineered, provisioned, and maintained in the same manner by BellSouth. Witness Varner explained that the CLPs provide the same basic services over these loops and that they should be compared to the same retail function. Witness Varner noted that consequently, BellSouth combines them into a single submeasure. Witness Varner asserted that disaggregating them further does not provide the Commission with any additional information about BellSouth's performance when compared with its retail operations. However, witness Varner stated, the CLP Coalition wants these three services reported separately in addition to the combined measurement that BellSouth already produces.

BellSouth witness Varner stated in rebuttal testimony that the CLP Coalition has not provided in this proceeding any evidence of any analytical procedures that allow factual conclusions to be made regarding how much disaggregation is sufficient as referenced in CLP Coalition witness Bursh's testimony. Witness Varner maintained that the degree of disaggregation is a judgment that balances the desire to view specific types of performance with the need to keep the size of the plan manageable.

Witness Varner argued that by any reasoned analysis, the CLP Coalition's proposal has to be viewed as useless. Witness Varner maintained that simply proposing a plan with 330,000 measures is outrageous.

Witness Varner noted that looking at Georgia data, about 50% of the submeasures in BellSouth's plan do not have any transactions for any CLP in the state. Witness Varner stated that he used Georgia because it has a higher level of competitive activity than North Carolina and that data for North Carolina would likely show even less activity than Georgia.

In his direct testimony, witness Varner presented the following question and answer:

> Q. Can CLPs further disaggregate the data provided by BellSouth if they are not satisfied with the disaggregation that BellSouth provides?
>
> A. Yes, if the comparison of results does not require a unique BellSouth retail analog. BellSouth makes available the raw data utilized for many of the measurements and a comprehensive raw data user manual. This data and the user manual allow the CLPs to build customized reports and further disaggregate reports based on individual CLP needs. I know of no other local exchange company that provides similar tools to the CLP community.

It is the Commission's belief from reviewing the record of evidence that the CLP Coalition did not dispute witness Varner's testimony in this regard.

BellSouth witness Varner explained in rebuttal testimony that BellSouth's SQM disaggregates its 71 measurements based on criteria such as (1) method of submission, i.e., mechanized, partially mechanized, and nonmechanized; (2) products, i.e., residence and business; (3) activity type, i.e., design and nondesign; and (4) volume, i.e., less than 10 circuits and greater than or equal to 10 circuits. Witness Varner stated that the end result is approximately 1,200 submeasures.

Witness Varner further stated in rebuttal testimony that the CLP Coalition is proposing disaggregation into a finer detail by disaggregating the measures into more products, plus they add geographic disaggregation into nine areas. Witness Varner made a conservative estimate that the CLP Coalition plan contains more than 330,000 submeasures.

Witness Varner agreed on cross-examination that BellSouth's SQM does disaggregate by product, volume of orders involved, trouble type, collocation type, and query type, however he noted that the disagreement between the Parties is the actual level of such disaggregation. Witness Varner also verified that BellSouth believes that performance measures should be disaggregated at either the state or regional level and not at the MSA level as proposed by the CLP Coalition. Witness Varner agreed that the Louisiana Commission ordered disaggregation at the MSA level in 1998 and renewed this requirement in a recent order.

Witness Varner stated that he agreed in concept that disaggregation by trunk design or type may be necessary but stated that based on BellSouth's SQM, he does not see a need for this type of disaggregation.

On redirect, witness Varner explained that BellSouth operates in seven MSAs in North Carolina plus it has another area for rural territory that is not in any MSA, and it also has the statewide aggregate. Witness Varner stated that the total number of unique geographies in North Carolina in which BellSouth operates is nine.

The CLP Coalition stated in its Proposed Order that disaggregation prevents poor performance in one respect from being obscured by being lumped together with other performance data. The CLP Coalition maintained that just as it is important for performance metrics to be comprehensive in scope, it is critical that performance reporting be required at a sufficiently detailed level to provide meaningful results. The CLP Coalition argued that the appropriate level of disaggregation is, along with the appropriate metrics and penalties to be applied, the single issue of greatest practical importance in this docket.

The CLP Coalition stated that BellSouth has proposed a total of **1,200 submetrics** for CLPs and that the CLP Coalition has proposed some **2,800 submetrics** although BellSouth claims that the CLP Coalition is actually demanding 331,164 submetrics. The CLP Coalition argued that the difference in the positions on the number of submetrics appears to be based on whether, as BellSouth alleges, disaggregation as proposed by the CLP Coalition necessarily involves all product types for all metrics, as well as all geographic areas in North Carolina, or whether the CLP Coalition is, as it insists, asking for disaggregation only for certain product types for certain metrics, and for only those geographic areas in which CLPs are operating.

(1) Geography

The CLP Coalition noted that there are differences between the CLP Coalition and BellSouth on what should be reported regionally versus statewide. The CLP Coalition maintained that unless all BellSouth activity comes from a centralized location and the data cannot be separated and is not different in process, North Carolina data should be reported. The CLP Coalition noted that BellSouth's performance relating specifically to North Carolina customers cannot be evaluated unless BellSouth reports its performance for North Carolina.

The CLP Coalition maintained that the chief dispute between the Parties is whether measurements should be disaggregated on the basis of geography. The CLP Coalition stated that the problem with BellSouth's position that there should be no geographic disaggregation and that each metric should be reported at the state or regional level is that the Commission, as well as the CLPs, have no access to the relevant retail data to determine when geographical disaggregation makes a difference and when it does not. The CLP Coalition noted that BellSouth currently reports provisioning and repair metrics at an MSA level in Louisiana. The CLP Coalition argued that the geographic disaggregation it is advocating is at the MSA level because CLPs are concerned that if rural and urban, competitive and noncompetitive areas of the state are combined, real disparities in performance will be hidden. The CLP Coalition maintained that disaggregation by MSA prevents masking of discriminatory treatment by geographic area.

CLP Coalition witness Kinard stated in direct testimony that BellSouth currently reports provisioning and repair metrics at an MSA level in Louisiana.

In rebuttal testimony, witness Kinard argued that the CLP Coalition is requesting disaggregation at the MSA level because the CLP Coalition is concerned that if rural and urban, competitive and noncompetitive areas of the state are combined, real disparities in performance will be hidden. Witness Kinard stated that if BellSouth believes that disaggregation by MSA is meaningless, BellSouth should supply the data for a period of time to show this, or it should have an unbiased third-party analyze the relationship of performance to geographic location.

Witness Kinard noted that in the New York third-party test of OSS, KPMG Consulting, Inc. (KPMG) recommended the disaggregation for special services for metropolitan New York City from upstate New York because KPMG's study of the data showed differences in performance between Manhattan's highly competitive market and the rest of the state. Witness Kinard stated that POTS services already were disaggregated into five areas in New York for retail performance reporting and the same areas were adopted for wholesale POTS (resale and UNE P) reporting.

Witness Kinard argued that the CLP Coalition cannot believe that the disaggregation it requests can be more demanding on computer processing and capacity than the statistical testing down to the end office that BellSouth has elected to do. Witness Kinard stated that there must be multiple, possibly dozens of end offices in each MSA to examine.

During cross-examination concerning geographic disaggregation, witness Kinard responded as follows:

> Q. What – what was the basis for your assumption that the CLPs are only in three MSAs?
>
> A. It was very high level, looking at the major cities in North Carolina, but it's – it was just assuming that they were the – you know – that those areas would – would have the most competition.

Witness Kinard further stated on cross-examination that she believed that the three MSAs she included were the Triad (Greensboro, Winston-Salem, and High Point), Charlotte, and Raleigh-Durham.

Witness Kinard further stated on cross-examination that disaggregation will always be changing. She also stated that "the disaggregation is a mystery right now in what we really need" and that she did not specifically know how many submeasures were in the CLP Coalition's proposed plan.

(2) Interface type

The CLP Coalition also maintained that there should be disaggregation by interface type. The CLP Coalition stated that the only way to determine whether a particular interface meets the applicable standards is to review data specifically for that interface and that if interface data is lumped together, the performance of a particular interface will be obscured.

CLP Coalition witness Kinard stated in direct testimony that one interface may react quicker or slower than another. Witness Kinard argued that the only way to determine whether one BellSouth interface meets the applicable standards is to review data specifically for that interface. Witness Kinard maintained that if data for one interface is lumped together with another interface, the performance of the interfaces will be obscured.

(3) Pre-order query type

The CLP Coalition argued that pre-order query type disaggregation is also important because a request for something simple may require less response time than a request for something more complex. The CLP Coalition maintained that disaggregation for response time for error messages and percent time outs also needs to be included.

CLP Coalition witness Kinard stated in direct testimony that pre-order query type disaggregation is important because a request for something simple like a phone number may require less response time than a request for something more complex like a due date reservation or loop makeup information.

(4) Product

The CLP Coalition maintained that useful levels of disaggregation should cover all of the products CLPs purchase when there is large-scale entry in both the residential and business markets. The CLP Coalition noted that witness Kinard stated that to be effective in measuring BellSouth's performance, reporting should categorize the information by product type, to identify with specificity the services provided by BellSouth.

The CLP Coalition recommended that the Commission find that BellSouth should disaggregate its various xDSL products since they cover different service lengths and different provisioning processes. The CLP Coalition also argued that DS1 loops should not be included with DS3 loops because BellSouth has different intervals for DS1 and DS3 loops. Also, the CLP Coalition proposed that line splitting should be disaggregated from line sharing in order to detect discrimination when the ILEC is not the voice provider of the loop. The CLP Coalition also noted that UNE P is unique from other UNEs and requires specific, unique performance measures.

CLP Coalition witness Kinard stated in direct testimony that product disaggregation is key because different performance can be expected based on the type of product being ordered. Witness Kinard argued that lumping together one type of order that has a two-day interval with another type of order that has a 10-day interval and producing a report showing that on average the orders are provisioned in seven days tells one nothing about whether either type of order was provided at parity or met the benchmark. Witness Kinard maintained that such aggregate treatment masks disparities in service and should not be permitted. Witness Kinard commented that the basic principle of product disaggregation is that each product should be tracked separately.

Witness Kinard explained that examples of product disaggregation include resale, UNEs and trunks, broken down by residential and business customer, where appropriate. Witness Kinard stated that further disaggregation for resale and UNEs include DS1s and DS3s. Witness Kinard maintained that DS1s and DS3s have differing provisioning and repair intervals and complexities that require separate reporting. Witness Kinard argued that separating basic rate (BRI) Integrated Services Digital Network (ISDN) from primary rate (PRI) ISDN is important for the same reason. Witness Kinard stated that different unbundled loop types, UCLs and xDSL loops, also should be disaggregated because BellSouth's performance will vary for each loop type. Witness Kinard commented that the UNE P needs to be reported separately because this product combines a loop with switching and transport and is different from just ordering a loop without the switching and transport.

Witness Kinard stated in rebuttal testimony that she did not agree with BellSouth's claims that various DSL products should not be disaggregated. Witness Kinard argued that BellSouth needs to disaggregate its various xDSL products since they cover different service lengths and different provisioning processes. Witness Kinard maintained that data carriers need to ensure that they are receiving the same treatment as BellSouth's data affiliate and to do that they need to have their performance compared to that provided by the affiliate on a product-by-product basis. Witness Kinard also asserted that disaggregation for line splitting is required in addition to line sharing to ensure that BellSouth is not favoring those data providers that use its voice services over those who use other voice providers.

(5) Service order activity

The CLP Coalition did not address this proposed disaggregation in its Proposed Order.

In her direct testimony, witness Kinard asserted that in the provisioning and repair of services, BellSouth's personnel can perform work in three basic ways: (1) through software changes entered into a computer; (2) via central office work; or (3) by dispatching a technician into the field at remote facilities or end-user premises. Witness Kinard maintained that these three different types of work activities can require significantly different amounts of time, and combining them or comparing one type of results to a different type results in misleading information about the amount of time required to perform activities for the CLP compared to itself. Witness Kinard argued that BellSouth should be required to cease its current discriminatory reporting practices and report data for itself and the CLPs as follows: software changes, dispatch-in, and dispatch-out.

(6) Volume

The CLP Coalition stated that volume category disaggregation captures differences that may arise based on, for example, the number of lines being ordered. The CLP Coalition maintained that CLPs recognize that the appropriate interval for a particular metric may depend on whether five or 50 lines are being ordered.

(7) Trouble type

The CLP Coalition argued that lumping together different kinds of problems leads to meaningless results and that in contrast, disaggregation by trouble type may highlight a repetitive problem and lead to a prompt and lasting resolution.

(8) Trunk design and type

The CLP Coalition also noted that aggregating trunks designed at different blocking thresholds could hide serious blocking problems by averaging trunks designed to block at 2%, 1%, or 0.5% together. The CLP Coalition maintained that disaggregation by trunk type is also important so that blocking on crucial Operator Services/Directory Assistance (OS/DA) or 911 trunks can be monitored by CLPs. The CLP Coalition asserted that BellSouth should disaggregate final dedicated trunks by the following trunk types and industry blocking standards:

(1) Trunk Type (OS/DA; 911); and
(2) Trunk Performance (2% local and intraLATA toll trunk groups; 1% local tandem, local direct office final, intraLATA interexchange, 911, DA, DA call complete; 0.5% OS, intraLATA tandem meet-point)

(9) Maintenance and Repair query type

The CLP Coalition maintained that maintenance and repair query type disaggregation is important for the same reasons as pre-order query type disaggregation; different types of queries can be expected to take different lengths of time to process.

(10) Collocation Category

The CLP Coalition argued that different types of collocations and augments take different amounts of time to provision and should be disaggregated.

The CLP Coalition noted that since the North Carolina collaborative meetings, various CLPs have become concerned about the time it takes BellSouth to convert special access circuits to extended enhanced loops (EELs). The CLP Coalition argued that at the very least, a level of disaggregation to monitor EEL conversions should be measured in North Carolina.

The CLP Coalition recommended that the Commission conclude that disaggregation should be required by geography, interface type, pre-order query type, product, service order activity, volume activity, trouble type, trunk design and type, maintenance and repair query type, and collocation category. The CLP Coalition noted that Exhibit KK-C, the CLP Composite Exhibit 3, and the CLP Coalition's June 25, 2001 Statement of Position on Disaggregation provide in-depth details on disaggregation such that deficiencies in performance can neither be masked nor ignored.

The CLP Coalition argued that it finds it difficult to believe that the disaggregation CLPs request can be more demanding on computer processing and capacity than the statistical testing, down to the end office that BellSouth has elected to do.

The CLP Coalition noted that the Florida Commission, while not ordering all of the levels of disaggregation proposed by the CLPs, did order BellSouth to further disaggregate specific measures and consequently, the additional disaggregation proposed by the CLP Coalition should not add a significant burden to BellSouth. The CLP Coalition recommended that the Commission adopt the level of disaggregation as proposed by the CLP Coalition in Appendix 2 to its Proposed Order.

Covad witness Allen stated in direct testimony that the Commission should require BellSouth to provide a level of disaggregation such that deficiencies in BellSouth's performance can be neither masked nor ignored. Witness Allen argued that disaggregation should be required by DSL product, maintenance and repair, query type, and collocation category. Witness Allen also proposed that information regarding DSL should be disaggregated by all loop types: unbundled ADSL, unbundled HDSL, unbundled UCL, unbundled digital channel/integrated digital subscriber line (UDC/IDSL), unbundled copper loop - nondesigned (UCL-ND), and line shared loops. Witness Allen argued that this type of disaggregated loop information would be helpful to Covad in North Carolina because by reporting data of specific performance for each type of loop, Covad may be able to capture additional efficiencies for its customers by altering the type of loop it orders.

Birch Telecom witness Sauder stated in direct testimony that the performance measurements OP-1 through OP-4 should be appropriately disaggregated for UNE P. Witness Sauder argued that when UNE P results are mixed with UNE products that may have significantly higher volumes of orders, the UNE P specific results are lost, reducing the ability, at the aggregate level, to measure whether parity exists for UNE P providers.

In his summary given at the hearing, witness Sauder stated that BellSouth's latest revised SQM resolves some of the concerns Birch has regarding the disaggregation of UNE P. However, witness Sauder asserted, BellSouth does not disaggregate UNE P in the flow-through measurement, and as such does not ensure the same flow-through rates for UNE P as it provides to resale providers and certainly not to the levels provided to BellSouth retail.

CLP Coalition witness Kinard stated during cross-examination that in response to a data request from BellSouth, the CLPs had answered that their disaggregation proposal created 2,488 submeasures. Witness Kinard explained that since that response, some CLPs have advocated some product disaggregation for the FOC and reject interval depending on whether it was mechanized, partially mechanized, or manual. She stated that the current number of submeasures produced from the CLP Coalition's disaggregation proposal is 2,700 and agreed that this change had taken place in the last 24 hours from when she took the witness stand.

Witness Kinard further agreed that the 2,488 submeasures reported in the data request response was actually an estimate and that the CLP Coalition did not mean for it to be a representation to the Commission that there are 2,488 submetrics and no more. Witness Kinard further commented that the 2,700 submeasure figure was not a "rock solid number" and that it was presented to show the Commission that it is certainly not 65,000 or 330,000. She agreed that the 2,700 figure was a best estimate. Witness Kinard also stated she was not sure if all of the CLPs concur in the estimated 2,700 figure. Witness Kinard also agreed that the 2,700 estimate of submeasures the CLP Coalition proposes with its disaggregation plan is different than the disaggregation plan the CLP Coalition included in the Final Task Force Report.

Witness Kinard agreed that the Commission should ignore the CLP Coalition's proposal on disaggregation in the Final Task Force Report and that the current 2,700 estimate is the CLP Coalition's most recent statement of its position.

On redirect, witness Kinard stated that she would request that the Commission solicit data from BellSouth showing whether there are geographic differences and to look at whether there are differences in performance and provisioning and maintenance based on those nine geographic disaggregations.

CLP Coalition witness Bursh stated in direct testimony that disaggregation should be done by all of the 10 categories proposed by witness Kinard, minus geographic disaggregation. However, in her rebuttal testimony, witness Bursh advocated geographic disaggregation. Witness Bursh stated that if the CLPs were given access to BellSouth data, it is possible that the data may warrant elimination of some levels of disaggregation by MSA in order to obtain an accurate picture of the level of BellSouth's performance to rural areas and urban areas.

Witness Bursh concluded that BellSouth and the CLPs, with the help of a mediator from the Commission, may be able to arrive at a level of disaggregation that is agreeable to all Parties. Witness Bursh stated that this would require all the data and good faith participation of all of the Parties. Witness Bursh maintained that BellSouth has thus far been unwilling to accept any input from the CLPs with regard to the development of its SQM or SEEM.

On cross-examination, witness Bursh agreed that in Florida she stated that there were exactly 10,000 submeasures in the CLPs' proposed plan, however she noted that the statement was an error. Witness Bursh stated that she was unsure of the rationale for why the 10,000 number was incorrect.

The Public Staff stated in its Proposed Order that disaggregation is the breaking down of performance data into sufficiently specific categories so that direct comparisons can be made. The Public Staff argued that the evidence in the docket fails to support the CLP Coalition's disaggregation proposal. The Public Staff noted that during the course of the proceeding, the CLP Coalition's position on the categories and level of disaggregation has wavered considerably and that witness Kinard appeared to be unfamiliar with certain key aspects of the CLP Coalition proposal. The Public Staff maintained that witness Kindard was unfamiliar with the basis for the CLP Coalition's proposed levels of geographical disaggregation, and acknowledged that she was uncertain about the overall number of measures that her disaggregation proposal would create. The Public Staff noted that in response to a request from the Presiding Commissioner, the CLP Coalition filed an updated position statement concerning disaggregation on June 25, 2001. The Public Staff argued that this document which proposed a total of **2,796 submeasures** included disaggregations that differed significantly from those witness Kinard proposed during the hearing.

The Public Staff maintained that it believes, despite BellSouth's assertion to the contrary, that service performance may indeed vary from exchange to exchange and from MSA to MSA. The Public Staff commented that this is amply demonstrated by the service quality statistics that BellSouth regularly files with the Commission such as the data on Trouble Reports per 100 Access Lines. However, the Public Staff opined, the CLP Coalition has neither provided any data that suggests that it has experienced different levels of service quality in different parts of North Carolina, nor has it explained why exactly three levels of geographical disaggregation are necessary, nor what these three levels represent. The Public Staff argued that the CLP Coalition failed to demonstrate that disaggregation on the scale proposed by witness Kinard would produce a benefit to the CLPs that is commensurate with the burden it would place on BellSouth.

The Public Staff maintained that the Commission is left in the position of deciding whether to accept BellSouth's disaggregation scheme, which is almost certainly conservative, even after scrutiny by the CLPs and at least two other state commissions, or the CLP Coalition's proposal, which lacks analysis to support its conclusions. The Public Staff argued that under these circumstances, the Commission should choose to accept the disaggregations proposed by BellSouth in its current North Carolina SQM with one important qualification. The Public Staff recommended that the Commission conclude that where BellSouth has been required to incorporate finer disaggregation levels into the Georgia SQM than those in the North Carolina SQM, the Commission require BellSouth to add the additional Georgia disaggregations, unless they relate to products, services, interfaces, or situations that are unavailable in North Carolina or inapplicable to BellSouth's North Carolina operations.

The Public Staff proposed that the Commission encourage the CLPs to redouble their efforts to document the operational problems they encounter in dealing with BellSouth and to develop and refine a common set of disaggregation proposals that they believe are essential to generate effective competition in North Carolina. The Public Staff proposed that the Commission be willing to consider further disaggregation where the CLPs clearly demonstrate the need for it. The Public Staff stated that the Commission should express to the CLPs that it expects the CLPs to better justify and quantify their disaggregation proposals in the future if they want the Commission to consider these requests seriously.

Based upon the foregoing, the Commission notes that there is significant variation in the actual number of submeasures included in the CLP Coalition proposed disaggregation plan according to BellSouth and the CLP Coalition. The CLP Coalition has provided the following estimates of the number of submeasures in its plan:

Data Request Response provided to BellSouth	2,488 submeasures
Witness Kinard at the hearing	2,700 submeasures
CLP Coalition's June 25, 2001 Statement of Position	2,796 submeasures
CLP Coalition's Proposed Order	2,800 submeasures

BellSouth witness Varner testified that BellSouth believes that the CLP Coalition proposed disaggregation plan includes more than 330,000 submeasures. The Commission is disturbed by this very significant difference in submeasures based on the CLP Coalition's statements and BellSouth's statements.

Although the Commission does not believe that the number of submeasures included in a disaggregation plan should be the ultimate deciding factor on which plan to choose, the Commission believes that it is reasonable to be cognizant of the number of submeasures that an adopted disaggregation plan would require. While the Commission agrees in theory that more disaggregation may provide a better result for comparison purposes, the Commission also agrees with BellSouth and the Public Staff that the magnitude of any adopted disaggregation plan should be considered. The Commission notes that BellSouth witness Varner provided undisputed testimony that if the CLPs are not satisfied with the disaggregation BellSouth provides, the CLPs can further disaggregate the data provided by BellSouth if the comparison of results does not require a unique BellSouth retail analog.

In analyzing and discussing the 10 disaggregation categories proposed by the CLP Coalition below, the Commission keeps in mind witness Varner's testimony urging the Commission to question whether the proposed CLP Coalition disaggregation is **absolutely necessary to determine whether BellSouth is providing nondiscriminatory access**, which the Commission agrees is the ultimate goal of any performance measurement plan.

(1) Geography

The Commission agrees in theory with the CLP Coalition and the Public Staff that performance may very well vary depending on geographic location within the State. However, the Commission believes that nine geographic areas for disaggregation as proposed by the CLP Coalition is premature and inappropriate at this point in time.

The Commission notes that since BellSouth is required to provide performance data based on MSAs in Louisiana, it should have the capability to provide 3 months of its performance measures by MSA in North Carolina during the first Commission review of BellSouth's performance plan. The Commission believes that it would be appropriate at the time of the first Commission review for BellSouth to provide its performance measures for North Carolina by MSA for the three months preceding the beginning of the first Commission review. The Commission believes that this three months worth of performance data based on MSA can then be examined by all Parties, including the Public Staff, and the Commission to determine if disaggregation by MSA would be beneficial for BellSouth to provide on a going-forward basis in North Carolina.

The Commission also notes that the Florida Commission in its September 10, 2001 *Order* found geographic disaggregation "not appropriate at this time".

Commission Conclusions - Geography: The Commission concludes that geographic disaggregation is not appropriate at this time. However, the Commission finds it appropriate to require BellSouth to provide data based on geographic disaggregation by MSA in North Carolina for the three months preceding the first Commission review of BellSouth's performance measures plan. The Commission finds that the Parties, including the Public Staff, and the Commission should analyze the data and determine the potential benefit of this level of disaggregation during the Commission's first review of BellSouth's performance measures plan.

(2) Interface Type

The Commission does not believe that the CLP Coalition provided sufficient evidence for the Commission to require BellSouth to disaggregate its performance measures based on interface type. The record of evidence contains very little information on disaggregation by interface type.

Commission Conclusions - Interface Type: The Commission concludes that insufficient evidence was presented on the issue of disaggregation by interface type and, therefore, we decline to require BellSouth to include such disaggregation in its performance measurement plan.

(3) Pre-Order Query Type

The Commission does not believe that the CLP Coalition provided sufficient evidence for the Commission to require BellSouth to disaggregate its performance measures based on pre-order query type. The record of evidence contains very little information on disaggregation by pre-order query type.

Commission Conclusions - Pre-Order Query Type: The Commission concludes that insufficient evidence was presented on the issue of disaggregation by pre-order query type and, therefore, we decline to require BellSouth to include such disaggregation in its performance measurement plan.

(4) Product

The Commission notes that the CLP Coalition in its June 25, 2001 Statement of Position on Disaggregation proposed that the Commission replace BellSouth's disaggregation by UNE with disaggregation by UNE Platform and UNE loops for measures O-3 and O-4. For measures O-7, O-8, O-9, O-10, O-11, P-1, P-2, P-3, P-4, P-5, P-9, M&R-1, M&R-2, M&R-3, M&R-4, and M&R-5, the CLP Coalition proposed the following disaggregation:

Instead of BellSouth's proposed UNE xDSL loop:

Unbundled UNE-derived ADSL loop
Unbundled UNE-derived HDSL loop
UCL Loops Long and Short
Other 2-wire xDSL Loops
Other 4-wire xDSL Loops
Line splitting

Instead of BellSouth's proposed UNE Digital Loop > DS1:

UNE DS1
UNE DS3 and higher

Instead of BellSouth's proposed UNE ISDN:

UNE ISDN PRI
UNE ISDN BRI

Instead of BellSouth's proposed UNE Combos Other:

Enhanced Extended Loop (Dispatch)
Special Access to EELs Migration

Instead of BellSouth's proposed Resale ISDN:

Resale ISDN PRI
Resale ISDN BRI
Resale DID trunks

Plus, inbound BST-to-CLP trunks for measure P-1
Plus, inbound BST-to-CLP trunks and Projects for measures P-2, P-3, P-4, P-5, and P-9

The Commission believes that it is appropriate to adopt the CLP Coalition's proposed disaggregation for measures O-3 and O-4 wherein disaggregation by UNE would be replaced with disaggregation by **UNE Platform and UNE loops**.

Concerning the other measures (O-7, O-8, O-9, O-10, O-11, P-1, P-2, P-3, P-4, P-5, P-9, M&R-1, M&R-2, M&R-3, M&R-4, and M&R-5), the Commission is not persuaded by the CLP Coalition's argument that the product disaggregation proposed by BellSouth could mask disparities in service. The Commission does not believe that adequate evidence was presented which shows that if xDSL loops are included together and not separated out into the various xDSL services (Unbundled UNE-derived ADSL loop, Unbundled UNE-derived HDSL loop, UCL Long and Short, Other 2-wire xDSL Loops, and Other 4-wire xDSL Loops), discriminatory treatment could not be determined. The Commission also believes that adequate evidence was not presented to support the CLP Coalition's proposal to further disaggregate BellSouth's proposed UNE digital loop > DS1, UNE ISDN, UNE Combos Other, or Resale ISDN. The Commission finds that the product disaggregation as proposed by the CLP Coalition (with the exception of measures O-3 and O-4 and line splitting) is not appropriate at this point in time but specifically notes that this issue will be considered during future Commission reviews of BellSouth's performance measurement plan.

The Commission is, however, persuaded by witness Kinard's testimony that disaggregation for line splitting should be required in addition to line sharing to ensure that BellSouth is not favoring those data providers that use BellSouth's voice services over those who use other voice providers. Therefore, the Commission concludes that line splitting and line sharing should be reported separately, where appropriate, in BellSouth's SQM.

Commission Conclusions - Product: The Commission finds it appropriate to adopt the CLP Coalition's proposed disaggregation based on product for measures O-3 and O-4. Further, the Commission finds it appropriate to adopt the CLP Coalition's proposal for BellSouth to separate line sharing and line splitting in its SQM. The Commission declines to adopt the remaining product disaggregations proposed by the CLP Coalition.

(5) Service Order Activity

The Commission does not believe that the CLP Coalition provided sufficient evidence for the Commission to require BellSouth to disaggregate its performance measures based on service order activity. The record of evidence contains very little information on disaggregation by service order activity.

Commission Conclusions - Service Order Activity: The Commission concludes that insufficient evidence was presented on the issue of disaggregation by service order activity and, therefore, we decline to require BellSouth to include such disaggregation in its performance measurement plan.

(6) Volume Category

The Commission notes that disaggregation by volume captures differences that may arise based on, for example, the number of lines being ordered. The Commission observes that the CLP Coalition recognized that the appropriate interval for a particular metric may depend on whether five or fifty lines are being ordered. The Commission notes that BellSouth witness Varner testified that BellSouth's SQM disaggregates by volume of orders involved. The Commission is not clear what additional volume disaggregation the CLP Coalition is proposing. Therefore, the Commission declines to require BellSouth to disaggregate further based on volume as proposed by the CLP Coalition.

Commission Conclusions - Volume Category: The Commission declines to require BellSouth to further disaggregate its performance measures based on volume category as proposed by the CLP Coalition.

(7) Trouble Type

The Commission does not believe that the CLP Coalition provided sufficient evidence for the Commission to require BellSouth to disaggregate its performance measures based on trouble type. The record of evidence contains very little information on disaggregation by trouble type.

Commission Conclusions - Trouble Type: The Commission concludes that insufficient evidence was presented on the issue of disaggregation by trouble type and, therefore, we decline to require BellSouth to include such disaggregation in its performance measurement plan.

(8) Trunk Design and Type

The Commission does not believe that the CLP Coalition provided sufficient evidence for the Commission to require BellSouth to disaggregate its performance measures based on trunk design and type. The record of evidence contains very little information on disaggregation by trunk design and type.

Commission Conclusions - Trunk Design and Type: The Commission concludes that insufficient evidence was presented on the issue of disaggregation by trunk design and type and, therefore, we decline to require BellSouth to include such disaggregation in its performance measurement plan.

(9) Maintenance and Repair Query Type

The Commission does not believe that the CLP Coalition provided sufficient evidence for the Commission to require BellSouth to disaggregate its performance measures based on maintenance and repair query type. The record of evidence contains very little information on disaggregation by maintenance and repair query type.

Commission Conclusions - Maintenance and Repair Query Type: The Commission concludes that insufficient evidence was presented on the issue of disaggregation by maintenance and repair query type and, therefore, we decline to require BellSouth to include such disaggregation in its performance measurement plan.

(10) Collocation Category

The Commission does not believe that the CLP Coalition provided sufficient evidence for the Commission to require BellSouth to disaggregate its performance measures based on collocation category. The record of evidence contains very little information on disaggregation by collocation category.

Commission Conclusions - Collocation Category: The Commission concludes that insufficient evidence was presented on the issue of disaggregation by collocation category and, therefore, we decline to require BellSouth to include such disaggregation in its performance measurement plan.

CONCLUSIONS

The Commission finds it appropriate to require BellSouth to disaggregate based on product as proposed by the CLP Coalition for measures O-3 and O-4 and require BellSouth to disaggregate based on both line sharing and line splitting, where appropriate, in its SQM. The Commission declines at this time to require BellSouth to disaggregate based on the other nine categories proposed by the CLP Coalition. However, the Commission hereby requires BellSouth to provide data based on geographic disaggregation for the three months preceding the first Commission review of BellSouth's performance measures plan to enable the Parties, including the Public Staff, and the Commission to determine whether this type of disaggregation information would be beneficial and useful on a going-forward basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

R-ENF-11: What is the appropriate level of disaggregation for purposes of determining the amount of remedy payments?

R-ENF-12: What is the appropriate level of disaggregation for purposes of determining compliance?

R-ENF-13: Should the same level of disaggregation be used to determine both compliance and remedy payments?

POSITIONS OF PARTIES

BELLSOUTH: The same level of disaggregation should not be used to determine both compliance and penalty payments. [NOTE: BellSouth really did not address ENF-11 and ENF-12, although its Finding of Fact No. 17 states that it addresses ENF-10, ENF-11, and ENF-12.]

CLP COALITION: [ENF-11, 12, AND 13] Disaggregation is critical to an effective remedy plan because it prevents poor performance in one area (such as xDSL) from being obscured by being lumped together with dissimilar performance data. Disaggregation must be sufficient to ensure an accurate comparison of results to expected performance and should proceed to a level where like-to-like comparisons can be made. Disaggregation should be required by interface type, pre-order query type, product, volume category, work type activity, trouble type, trunk design and type (for trunk blockage measurements), maintenance and repair query type, geography, and collocation category. This is true regardless of whether a retail analog or a benchmark serves as the performance standard. Reporting, compliance, and remedies should be determined at the same level of disaggregation.

PUBLIC STAFF: BellSouth should revise its SEEM plan in North Carolina so that the plan does not contain lower or fewer levels of disaggregation than its Georgia enforcement plan.

DISCUSSION

BellSouth recommended in its Proposed Order that the Commission find that the same disaggregation should not be used for measurements and for penalties. BellSouth argued that under the CLP plan, a penalty is paid for each and every one of the hundreds of thousands of submeasures in the plan. BellSouth argued that consistent with the orders of the FCC and state commissions, BellSouth advocates the payment of penalties for only the key measurements that affect customers. BellSouth stated that the difference in plans, however, has less to do with setting an appropriate degree of disaggregation than it does with adopting an appropriate approach to remedies.

BellSouth noted that apart from this issue, it is also appropriate to aggregate certain measures for penalty purposes that are disaggregated for measurement purposes. For example, BellSouth stated, while there may be some usefulness in disaggregating measurements to a fairly granular level for purposes of making comparisons, this level of disaggregation is not always appropriate when penalties are applied.

BellSouth witness Dr. Taylor stated in rebuttal testimony that if a purpose of a measurement plan is to hold BellSouth accountable for every little "failure" to provide a submeasure at the desired quality level, regardless of the larger consequences of that failure, then the more disaggregated approach of the CLP Coalition would appear to have merit. However, Dr. Taylor stated that he believes that the purpose of a measurement plan is to ensure that BellSouth provides wholesale services, not just individual functionalities, at parity so that CLPs can compete for customers and provide matching services. Therefore, Dr. Taylor asserted, BellSouth's proposed more aggregated approach makes more economic sense. Dr. Taylor stated that whether BellSouth falls short or exceeds the quality standard for each and every submeasure or functionality is less important than whether the wholesale services meet quality standards set for them.

The CLP Coalition stated in its Proposed Order that both BellSouth and the CLPs agree that an appropriate level of disaggregation is important because measurements and reporting frequency occur only at this level. The CLP Coalition maintained that both the CLPs and BellSouth agree that disaggregation should proceed to a level where like-to-like comparisons can be made. The CLP Coalition asserted that BellSouth states that its position endorses like-to-like comparisons, however, BellSouth has proposed disaggregation at a more granular level for reporting purposes than for remedy purposes. For example, the CLP Coalition noted, there are some 21 levels of product disaggregation for the Order Completion Interval measure for reporting while there are only eight levels of disaggregation for the same measure in SEEM and similarly, Reject Interval has 17 levels of product disaggregation in BellSouth's SQM, but BellSouth is only proposing one level of disaggregation in SEEM. Therefore, the CLP Coalition argued, performance on a large number of service requests, represented as partially mechanized and nonmechanized LSRs, is not subject to remedies, even though BellSouth's performance may be noncompliant.

The CLP Coalition argued that the inadequate level of disaggregation in SEEM facilitates the consolidation of dissimilar products for comparisons. As an example, the CLP Coalition pointed to the fact that within SEEM BellSouth aggregates DS1 loops and 2-wire analog loops for provisioning metrics such as Average Completion Interval, even though each of the various UNEs has a different provisioning interval. The CLP Coalition noted that the interval for one DS1 loop is 23 days and the interval for one 2-wire analog loop is 4 days and that, therefore, aggregating these products is inappropriate and does not contribute to like-to-like comparisons. The CLP Coalition also maintained that such aggregation masks differences and makes detection of inferior performance less likely. The CLP Coalition stated that specifically it allows discrimination on high-revenue/low volume products such as DS1s or DS3s to easily be concealed through consolidation with a dissimilar low-revenue/high volume product such as an analog loop. Consequently, the CLP Coalition maintained, insufficient product disaggregation will allow BellSouth to influence the type and pace of developing competition.

The CLP Coalition concluded that it believes that disaggregation for remedy reporting should match what is required for performance reporting. The CLP Coalition recommended that the Commission adopt the same level of disaggregation for compliance and remedy purposes. The CLP Coalition added that requiring BellSouth to provide for the same level of disaggregation for performance reporting and remedy reporting adds very little, if any, additional burden to BellSouth. The CLP Coalition also noted that the Florida Commission ordered 825 levels of disaggregation for compliance reporting and penalties for Tier 1 and over 875 total levels of disaggregation for compliance reporting and penalties for Tier 2. The CLP Coalition recommended that the Commission conclude that the level of disaggregation proposed by the CLPs is the appropriate level of disaggregation for performance reporting and remedy reporting purposes.

CLP Coalition witness Bursh stated in direct testimony that there are analytical procedures that allow factual conclusions to be made regarding how much disaggregation is sufficient. Witness Bursh recommended that remedies and compliance should be determined at the same level of disaggregation.

The Public Staff stated in its Proposed Order that the concept of disaggregation is vital to the development of an enforcement plan. The Public Staff noted that BellSouth disaggregated its SEEM measurements into 57 Tier 1 and 75 Tier 2 submeasurements as listed in Appendix B of Exhibit AJV-6. The Public Staff also noted that AT&T witness Bursh testified that BellSouth's SEEM had an inadequate level of disaggregation and allowed dissimilar products to be consolidated for comparisons.

The Public Staff maintained that the level of disaggregation used in BellSouth's SEEM is a good starting point for an appropriate enforcement plan. The Public Staff noted that while there is a possibility that such aggregation could mask differences, the Public Staff is not convinced that the CLP Coalition's plan containing excessive disaggregation offers a superior solution. However, the Public Staff noted, BellSouth has demonstrated the ability to achieve more disaggregation in its SEEM plan in Georgia and has presented no reason why it should not be held to at least the same standard in North Carolina. Therefore, the Public Staff recommended that the Commission require BellSouth to alter its SEEM plan in North Carolina as proposed by the Public Staff in Appendix I to its Proposed Order so that the plan does not contain lower or fewer levels of disaggregation than the Georgia plan. Also, the Public Staff commented, if the Commission adopted the Public Staff's proposed six-month review process, the CLPs would have the ability to suggest changes to disaggregation levels at the six-month review.

The Commission agrees with the CLP Coalition that the level of disaggregation should be the same for remedy payments and compliance. The Commission does not believe that BellSouth presented a strong argument for not applying the same level of disaggregation to compliance as to remedy payments. The Commission notes that the discussion on the appropriate actual level of disaggregation is discussed in the Evidence and Conclusions for Finding of Fact No. 11 concerning R-ENF-10, and the Commission believes that this issue concerns whether the same level of disaggregation should be applied to both compliance and to remedy payments. The Commission has seen no persuasive evidence as to why different levels of disaggregation should be applied to compliance reporting and remedy payments.

The Commission further notes that the Florida Commission stated in its September 10, 2001 *Order*

> BellSouth has proposed disaggregation at a more granular level for reporting and pass/failure determination purposes than for penalty assessment. For reporting purposes, BellSouth proposes approximately 19 levels of product disaggregation. However, the BellSouth SEEM methodology for determining penalties re-aggregates various product categories. BellSouth is proposing only seven levels of product disaggregation for penalty determination. We find that this product reaggregation is inappropriate for penalty determination. There are eight metrics included in this Order to which product disaggregation for compliance purposes shall match what it has recommended, and we have approved, for product reporting purposes.

CONCLUSIONS

The Commission concludes that the same level of disaggregation should be used to determine both compliance and remedy payments.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

R-ENF-14: Whether penalty payments should apply for late, incomplete, or erroneous reports and raw data?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth should not be subjected to an automatic penalty for the late posting of reports or for the inadvertent posting of inaccurate reports. However, BellSouth will make every effort to meet any deadline imposed on it. Further, there is no evidence that the occasional posting of a late report would cause any harm to the CLP. In any event, there is no generally accepted definition as to what constitutes "an incomplete or inaccurate report" and none has been proposed. Applying a penalty once an error has been corrected would discourage corrections.

CLP COALITION: If performance data and associated reports are not available to the CLPs by the due date, BellSouth should be liable for payment of $5,000 for every day past the due date the reports and data are not available. BellSouth's liability should be determined based on the latest report delivered to a CLP. If performance data and reports are incomplete, or if previously reported data and reports are inaccurate, BellSouth should be liable for payments of $1,000 to a state fund for every day past the original due date the reports remain uncorrected.

PUBLIC STAFF: BellSouth should be subject to a $1,000 penalty, payable to the Commission or another party designated by the Commission, for each full day following the monthly reporting deadline that it fails to provide either the complete, correct monthly aggregate report, or the complete correct set of aggregate raw data up to a total penalty of $3,000 per day.

DISCUSSION

Both the Public Staff and the CLPs were supportive of penalties for late, incomplete, or erroneous reports and raw data, while BellSouth argued that it should not be subjected to such penalties.

The Commission believes that a penalty is appropriate in such cases in order to provide an incentive for BellSouth to provide complete and accurate reports and data that it is required to make available. Complete and accurate information is important in ascertaining whether BellSouth is performing its duties in a timely and nondiscriminatory manner.

The Commission agrees in substance with the Public Staff that the best way to implement this obligation is to require that BellSouth should be subjected to a $1,000 penalty for each full day following a monthly report deadline that it fails to provide either the complete, correct monthly aggregate performance report, the complete correct, monthly aggregate enforcement report, or the complete correct set of aggregate raw data, up to a penalty of $3,000 per day. Such penalty should be payable to the Commission.

CONCLUSIONS

The Commission concludes that penalty payments should apply for late, incomplete, or erroneous reports and raw data as set out in the Discussion above.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

R-ENF-15: Should remedies apply to all measures and, if not, to what performance measures should remedy payments apply?

POSITIONS OF PARTIES

BELLSOUTH: Penalties should be paid for failure to achieve key measures in areas that affect customers, as proposed by BellSouth.

CLP COALITION: Remedies should apply to all measures. No measures are excluded in the CLP Coalition's remedy plan because each measures an activity that affects customers and ultimately the openness of the market. However, in practice, not all of the submeasures contribute to remedies. If there is no activity in a given submeasure then no remedies apply for that submeasure.

PUBLIC STAFF: The only measurements that should be subject to penalties under the enforcement plan should be those identified as SEEM measurements in BellSouth's SQM. The SEEM measurements for Acknowledgment Message Timeliness, Acknowledgment Message Completeness, Reject Interval, FOC Timeliness, Invoice Accuracy, and Mean Time to Deliver Invoice should be subject to both Tier 1 and Tier 2 penalties.

DISCUSSION

BellSouth stated in its Proposed Order that under its plan, penalties are paid for the failure to achieve key measures in areas that affect customers and that the measurement set is patterned after those used in New York and Texas. BellSouth maintained that it took the approach ordered by the New York and Texas Commissions of assigning penalties only to the measurements that are most customer impacting. BellSouth noted that applying this standard, BellSouth proposes to pay penalties for 57 Tier 1 submeasures and 75 Tier 2 submeasures. BellSouth recommended that the Commission agree with the specific factors that support BellSouth's decision to propose penalties for only some of the submeasures used for measurement purposes. BellSouth outlined the following categories of measurements for which penalties are not proposed:

(1) Aggregation of Measures
(2) Diagnostic Measurements
(3) Method of Submission
(4) Parity by Design Measures
(5) Correlated Measures
(6) Regional Measures

BellSouth stated that a second salient feature of its remedy plan is that penalties are paid on a transaction basis or, in other words, there is a schedule of penalties set forth as an exhibit to witness Varner's testimony that includes the amount that BellSouth proposes to pay in every instance in which BellSouth's performance falls short of parity. BellSouth argued that from a common sense standpoint, it is difficult to believe that absolutely every measurement, if failed, would have precisely the same effect on a CLP and its customers and, therefore, BellSouth has varied the size of penalties associated with different measures in its plan to reflect this reality.

BellSouth noted that the CLP Coalition plan stands in dramatic contrast to BellSouth's proposed plan. BellSouth maintained that the CLP Coalition plan has a penalty associated with every single submeasure. BellSouth argued that the massive penalties that could attach to each of the CLP Coalition's proposed measurements bear no relationship to the damage that would be suffered by the CLPs. BellSouth asserted that there is not a shred of evidence in the record that the CLP Coalition made any attempt at all to actually tie the amounts of the penalties proposed to the damages incurred. BellSouth maintained that its plan is patterned after the plans utilized in Texas and New York and that the Louisiana and Georgia plans do the same. BellSouth noted that the FCC rejected the idea that there must be a penalty associated with every measure when it reviewed the plan adopted in New York.

BellSouth concluded that in a nutshell, the CLP Coalition plan has the potential to generate massive penalties to 100,000 or more measurement categories, and doing so every month for every CLP. BellSouth stated that it is difficult to imagine a more egregious example of abusing the penalty process and that no commission anywhere in the United States has adopted the CLPs' proposal in this regard.

BellSouth witness Varner stated in rebuttal testimony that the SEEM only requires that penalties be assessed for failures to meet performance standards for key customer impacting functions. He stated that SEEM includes relevant measures that affect customers, not every measurement somebody could think of. Witness Varner argued that the purpose of a self-effectuating penalty plan is to assess automatic penalties when key outcomes are missed. Witness Varner urged that these outcomes should be limited to those situations that would likely affect a customer's choice of carriers. Witness Varner stated that BellSouth has identified 57 such measures and submeasures. Witness Varner commented that while it is substantially fewer than the 1,200 submeasures BellSouth began with, that should not be surprising.

In his summary at the hearing, witness Varner explained that BellSouth has collapsed its 1,200 submeasures into 56 Tier 1 and 74 Tier 2 measurements.

Witness Varner described the categories of measures that BellSouth is proposing to exclude from the penalty plan, as follows:

Aggregation of Measures - BellSouth does not believe that it is either productive or appropriate to disaggregate to the same level for both compliance reporting and remedy reporting.

Diagnostic Measures - BellSouth believes that diagnostic measures identify a portion of an overall process that does not have an impact on the end user or that they can simply be a different way of displaying information associated with a measurement.

Method of Submission - BellSouth stated that in the SEEM, measures are only disaggregated by fully mechanized submission since this is the method of submission where the preponderance of CLP activity occurs.

Parity by Design Measures - BellSouth believes that certain measures are considered parity by design such as E911 and OS/DA. This means that the processes that are addressed by these measures are such that it is physically impossible for BellSouth to distinguish between CLP orders and orders for BellSouth retail. During cross-examination, witness Varner asserted that the Department of Justice and the FCC Staff have agreed with BellSouth's determination of measures that are parity by design. He also noted that KPMG is completing an audit of

BellSouth's determination of parity by design at the request of the Louisiana Staff. Witness Varner did not know the current status of the audit.

Correlated Measures - BellSouth believes that generally remedies should not apply to performance measures that are shown to be duplicative of or correlated with other measures. BellSouth asserted that it would be inappropriately punitive to require BellSouth to pay at a minimum twice for the same act or inaction.

Regional Measures - Some of BellSouth's SQM measures are regional only in scope, meaning that data is only produced at the regional level.

Witness Varner noted that in the CLP Coalition plan, if BellSouth misses one of the CLP Coalition's more than 330,000 measurements, BellSouth pays a penalty. Witness Varner argued that the CLP Coalition makes no attempt to determine whether a submeasure is likely to directly affect a customer's choice of carrier. Witness Varner noted that the CLP Coalition simply applies the same penalty to each measurement with the only variable being its assessment of relative severity. Witness Varner argued that it is absurd that the CLP Coalition plan defines more than 330,000 key areas of activity given the fact that five years after TA96, many of these so called key areas have no transactions for any CLP in the state.

Witness Varner agreed on cross-examination that BellSouth decided which measures to include in its enforcement plan based on whether they significantly impacted customer satisfaction or customer choice of carrier. Witness Varner agreed that this determination was made in-house by BellSouth but asserted that it was not an uninformed decision.

The CLP Coalition stated in its Proposed Order that BellSouth is contending that in its New York BellAtlantic *Section 271 Order*, the FCC rejected the argument that all measures used to monitor performance should be included in an enforcement plan. The CLP Coalition also noted that BellSouth argues that its SEEM measurement plan is patterned after those used in New York and Texas. The CLP Coalition further maintained that BellSouth contends that its experience in providing access to IXCs, combined with the outcome of prioritized measures from New York and Texas, has resulted in BellSouth offering a similar key set of customer-impacting metrics.

The CLP Coalition stated that it disagrees with BellSouth's position and points to the differences in measures in the New York and Texas plans that were selected as compared to the subset of measures BellSouth included in SEEM. The CLP Coalition noted that its witness Bursh pointed out that in New York, as acknowledged by BellSouth, the CLPs participated in developing the list of comprehensive measures from which the enforcement measures were selected. The CLP Coalition maintained that while BellSouth has been ordered to include certain measures requested by CLPs in its SQM and SEEM, BellSouth has not requested and has even ignored, input from the CLPs regarding the measures that should be included in its SQM and SEEM.

The CLP Coalition argued that many important aspects of BellSouth's performance critical to the CLPs' ability to compete in the local market will not be subject to remedies under

BellSouth's plan. The CLP Coalition provided as an example the fact that BellSouth acknowledges that FOC Timeliness is a key measure for CLPs, but excludes FOC Timeliness from Tier 1 of SEEM. The CLP Coalition noted that witness Bursh testified that even though BellSouth will measure its performance on all of the measures in its SQM, under BellSouth's proposal there would be no consequences for BellSouth's failure to meet its performance obligations on many of them and therefore, no incentive for BellSouth to meet performance standards. Witness Bursh also testified that there must be consequences for the failure to perform adequately in regard to all measures that the Commission orders BellSouth to include in its SQM, or BellSouth has no incentive to modify its behavior.

The CLP Coalition recommended that the Commission find that while it is neither possible nor desirable to measure each and every step in each and every process involved in the delivery of local telephone service, the failure to include adequate measures subject to a remedies plan would permit, and indeed, encourage BellSouth to perform well on the measures that "count", without providing BellSouth an inventive to be diligent about providing nondiscriminatory service in other areas. The CLP Coalition recommended that the Commission conclude that the evidence of record supports the CLP Coalition's position that unlike the circumstances in New York, rather than charging the CLPs with the task of identifying those measures that they felt were key customer affecting measures, BellSouth unilaterally made the determination of the measures that would be included in SEEM. The CLP Coalition proposed that the Commission find that the measures included in BellSouth's SEEM plan simply do not meet the FCC criteria that penalties should cover a comprehensive range of carrier-to-carrier performance. The CLP Coalition further recommended that the Commission find that the measures proposed by the CLP Coalition represent a more comprehensive view of the measures necessary to ensure that the goals of TA96 are satisfied. The CLP Coalition proposed that the Commission find that the CLP Coalition's position that all measures adopted in the plan should be subject to remedies is appropriate.

Birch witness Sauder agreed that in the Texas plan, not all of the measurements have penalty payments associated with them.

During cross-examination, CLP Coalition witness Kinard agreed that the Texas plan has Tier 2 penalties associated with 394 measurements but explained that she has not gone back to check the accuracy of that statement.

CLP Coalition witness Bursh stated in direct testimony that all of the measures proposed by the CLPs should be subject to the remedies plan. Witness Bursh commented that no measures are excluded in the CLP Coalition's remedy plan because each measures an activity that affects customers and ultimately the openness of the market. Witness Bursh argued that every measure is designed to identify key areas of activity that are necessary for the development of competition and the opening of BellSouth's local market. Witness Bursh explained that in practice not all submeasures contribute to remedies because if there is no activity in a given submeasure then no remedies apply for that submeasure.

Witness Bursh further stated that BellSouth's SEEM does not encompass a comprehensive range of carrier-to-carrier performance. Witness Bursh argued that the measures in BellSouth's SEEM are merely a subset of the BellSouth SQM and that BellSouth inappropriately excludes many of the BellSouth SQM measures from its remedy plan. Witness Bursh alleged that the use of the narrow scope of measures provided in BellSouth's SEEM will result in critical, customer-impacting areas not being monitored or subject to remedies. As an example, witness Bursh stated that the Speed of Answer in Ordering Center measure is not an enforcement measure in SEEM. Witness Bursh maintained that when CLP Local Service Requests (LSRs) are rejected in error, the CLP is forced to make contact with Local Carrier Service Center (LCSC) representatives before resubmitting the LSR. Witness Bursh argued that abnormally long holding times hinder the CLPs in being able to expeditiously resubmit the LSR such that the CLP customer can receive the desired service.

Witness Bursh commented that BellSouth witness Varner stated that the New York and Texas Commissions charged the CLPs with communication of the measurement set that was most customer impacting. Witness Bursh argued that BellSouth did not allow the North Carolina CLPs to make a similar determination for SEEM. Witness Bursh alleged that BellSouth has unilaterally made its determination of the measures that are key CLP customer impacting measures.

Witness Bursh also testified that BellSouth has less than 82 submeasures that are subject to remedies in its North Carolina SEEM while the Texas plan has several thousand submeasures that are subject to remedies.

Witness Bursh stated that BellSouth witness Varner's reference to the FCC's requirements is misleading. Witness Bursh stated that while witness Varner quoted correctly from the FCC's New York Bell Atlantic *Section 271 Order* (Paragraph 439), one cannot ignore the fact that the FCC's statement is based on the New York Commission selecting enforcement measures from a set of measures that were collaboratively developed. Witness Bursh argued that the enforcement measures in SEEM were not selected from a base set of collaboratively established measures.

Witness Bursh maintained that BellSouth's SEEM limits monitoring of critical, customer-impacting areas of performance. For example, witness Bursh continued, BellSouth does not include LNP-FOC Timeliness or LNP-Reject Interval in SEEM as enforcement measures. Witness Bursh argued that without a FOC, CLPs cannot provide their customers with an expected date of service. Witness Bursh asserted that end user customers are not willing to rely on carriers who cannot provide something as simple as a service due date in a timely manner. Witness Bursh also noted that BellSouth has excluded Speed of Answering in Order Centers from SEEM. Witness Bursh stated that CLP testimony conveys that hold times to the LCSC are unbearably long and hinder the ability of CLPs to be responsive to their customers. Witness Bursh provided the following list of key SQM measures that BellSouth decided to omit from its remedy plan:

(1) Service Inquiry with LSR Firm Order
(2) LNP Reject Interval
(3) LNP FOC
(4) Mean Held Order Interval

(5) Average Jeopardy Notice Interval
(6) Percentage of Orders Given Jeopardy Notice
(7) Average Completion Notice Interval
(8) Coordinated Customer Conversion - Average Recovery Time
(9) Speed of Answer Performance/Average Speed to Answer - Toll
(10) Speed to Answer Performance/Percent Answered within "x" Seconds - Toll
(11) Speed to Answer Performance/Average Speed to Answer - DA
(12) Speed to Answer Performance/Percent Answered within "x" Seconds - DA
(13) Collocation Average Response Time
(14) Collocation Average Arrangement Time
(15) Change Management Notice Average Delay Days
(16) Change Management Documentation Average Delay Days
(17) Meantime to Notify CLP of Network Outage
(18) Recurring Charge Completeness
(19) Non-Recurring Charge Completeness
(20) Database Update Interval
(21) Database Update Accuracy
(22) NXX and LRNs Loaded by LERG Effective Date
(23) Notification of Interface Outages

Witness Bursh also stated that BellSouth's SEEM inappropriately excludes the following enforcement measures from Tier 1 remedies:

(1) Loop Makeup - Response Time - Manual
(2) Loop Makeup - Response Time - Electronic
(3) Acknowledgment Message Timeliness
(4) Acknowledgment Message Completeness
(5) Percent Flow-Through Service Requested
(6) Invoice Accuracy
(7) Mean Time to Deliver Accuracy
(8) Usage Data Delivery Accuracy
(9) Reject Interval
(10) FOC Timeliness
(11) Cooperative Acceptance Testing - % xDSL Loops Tested
(12) Timeliness of Change Management Notices
(13) Timeliness of Documents Associated with Change

Witness Bursh asserted that these exclusions from Tier 1 penalties mean that BellSouth can provide noncompliant support to an individual CLP in these areas without any consequences for its discriminatory behavior.

During cross-examination, witness Bursh agreed that neither the plan adopted in Georgia nor the one adopted in Louisiana include all of the measures in the penalty plan. She also agreed that none of the states in which the FCC has granted the RBOC interLATA authority including Texas, New York, Oklahoma, and Kansas, have ordered that there should be a penalty associated with every single measure. However, witness Bursh continued, in both Texas and New York, the parties had full collaborative involvement in the establishment of the base measures from which the enforcement measures were selected.

The Public Staff noted in its Proposed Order that CLP witness Bursh listed the following measures from the SEEM that the CLPs believe are inappropriately excluded from the Tier 1 penalties:

(1) Loop Makeup - Response Time - Manual
(2) Loop Makeup - Response Time - Electric
(3) Acknowledgment Message Timeliness
(4) Acknowledgment Message Completeness
(5) Percent Flow-Through Service Requested
(6) Invoice Accuracy
(7) Mean Time to Deliver Invoice
(8) Usage Data Delivery Accuracy
(9) Reject Interval
(10) FOC Timeliness
(11) Cooperative Acceptance Testing - % xDSL Loops Tested
(12) Timeliness of Change Management Notices
(13) Timeliness of Documents Associated with Change

The Public Staff maintained that it agrees with BellSouth that only measurements which impact customers should be included in a penalty plan and that factors such as correlation, parity by design, and regionality should be considered when deciding which measures to include in the plan. The Public Staff stated that it does not appear that the CLP Coalition attempted to take any of these factors into consideration as is evidenced by the suggestion that all measurements in the SQM plan should be included as part of the enforcement plan. The Public Staff argued that the FCC made it clear in the New York BellAtlantic *Section 271 Order* that it does not require an all-encompassing enforcement plan. Therefore, the Public Staff recommended that the Commission conclude that only the measurements identified as SEEM measurements in BellSouth's SQM should be subject to penalties in the enforcement plan.

The Public Staff stated that while it agrees with BellSouth that not all SEEM measurements should be classified as both Tier 1 and Tier 2 penalties, it does believe that several measurements were improperly excluded from Tier 1 penalties. The Public Staff stated that of the measures identified by the CLP Coalition as critical, the Public Staff believes that the following SEEM measurements should be subject to both Tier 1 and Tier 2 penalties:

(1) Loop Makeup - Response Time - Manual
(2) Loop Makeup - Response Time - Electric
(3) Acknowledgment Message Timeliness
(4) Acknowledgment Message Completeness
(5) Reject Interval
(6) FOC Timeliness
(7) Invoice Accuracy
(8) Mean Time to Deliver Invoice

(9) Cooperative Acceptance Testing - % xDSL Loops Tested

The Commission notes that in its New York *Section 271 Order*, the FCC discussed the issue of the potential penalty payments under an enforcement plan. Specifically, the FCC stated:

> . . . The New York Commission has sought to place sizeable penalties on the most critical performance areas, thereby ensuring that Bell Atlantic will incur fixed, certain sanctions if its performance slips in these critical areas . . . (Paragraph 437).
>
> We also believe that the scope of performance covered by the Carrier-to-Carrier metrics is sufficiently comprehensive, and that the New York Commission reasonably selected key competition-affecting metrics from this list for inclusion in the enforcement plan. . . (Paragraph 439 with footnotes omitted).

The Commission also recognizes that the record of evidence indicates that the measurement plans adopted in Texas, New York, Georgia, Louisiana, Oklahoma, and Kansas **do not include all of the performance measures** in the remedy plan. However, the Commission is concerned that for North Carolina, BellSouth has unilaterally decided which measures were customer impacting for CLPs and should be excluded from the remedy plan **without any input from the CLPs**.

The Commission is also concerned about witness Bursh's testimony that BellSouth has excluded the measure for LNP-FOC Timeliness from the remedy plan. The Commission agrees with witness Bursh that customers may not be willing to rely on carriers who cannot provide something as simple as a service due date in a timely manner.

The Commission notes that the Public Staff has recommended that the Commission require BellSouth to include 9 of the CLP Coalition recommended 13 measures in Tier I and Tier 2 of BellSouth's penalty plan. However, the Commission is concerned with this recommendation since no support or reasoning was provided for including 9 of the 13 measures.

The Commission believes based on the record of evidence that it is appropriate to include only those measures that are customer-impacting to CLPs in the BellSouth remedy plan. However, the Commission does not believe that there is adequate evidence in the record for the Commission to determine exactly which measures should be included in the remedy plan. The Commission does not believe that it is reasonable or appropriate for BellSouth to unilaterally decide which measures are customer-impacting to CLPs. The Commission further does not believe that the CLP Coalition provided adequate support for including all of the measures it determined were key customer-impacting measures. Therefore, the Commission finds it appropriate to require BellSouth, the CLP Coalition, and the Public Staff to negotiate which measures should be included in BellSouth's remedy plan. The Commission hereby instructs the Parties to closely review the measures that were included and excluded in the remedy plans adopted in Texas, New York, Georgia, Louisiana, Oklahoma, and Kansas and to use this review to aid in the negotiations. The Commission instructs the Parties to complete this negotiation and submit a joint report on the measures the Parties negotiated to include in the BellSouth remedy plan by no later than July 22, 2002. The Commission notes that the Public Staff provided a possible compromise in its Proposed Order that BellSouth and the CLP Coalition could examine first to determine if the Public Staff's proposal would be agreeable to both Parties. Finally, the Commission concludes that until this issue is negotiated, the SQM should include BellSouth's proposal on this issue.

CONCLUSIONS

The Commission concludes that based on the record of evidence, it is appropriate to include only those measures that are customer-impacting to CLPs in the BellSouth remedy plan. However, the Commission finds that there is inadequate evidence in the record for the Commission to determine exactly which measures should be included in the remedy plan. The Commission hereby requires BellSouth, the CLP Coalition, and the Public Staff to negotiate which measures should be included in BellSouth's remedy plan. The Commission instructs the Parties to closely review the measures that were included and excluded in the remedy plans adopted in Texas, New York, Georgia, Louisiana, Oklahoma, and Kansas and to use this review to aid in the negotiations. The Commission instructs the Parties to complete this negotiation and submit a joint report on the measures the Parties negotiated to include in the BellSouth remedy plan by no later than July 22, 2002. Finally, the Commission concludes that until this issue is negotiated, the SQM should include BellSouth's proposal on this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

R-ENF-16: Should there be a Tier 3 penalty suspending BellSouth's ability to market long distance services; and, if so, how and under what circumstances should a Tier 3 penalty be invoked?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth had originally proposed adoption of a Tier 3 penalty but subsequently concluded that a Tier 3 penalty was unnecessary in light of its proposed absolute cap on penalty payments. In its Proposed Order, BellSouth stated that the issue was resolved because no Party advocates the adoption of a Tier 3 penalty.

CLP COALITION: The CLP Coalition did not address this issue in its Proposed Order.

PUBLIC STAFF: The Public Staff did not address this issue in its Proposed Order.

DISCUSSION

Although BellSouth did not pursue implementation of a Tier 3 penalty and no other Party advocated adoption of a Tier 3 penalty, the Commission notes that as described in the BellSouth *Georgia/Louisiana Section 271 Order* issued by the FCC on May 15, 2002, BellSouth's remedy plans in *both* Georgia and Louisiana have three Penalty Tiers (Paragraph 292). The Tier 3 penalty is a voluntary suspension of additional marketing and sales on long distance services, and the penalty occurs if BellSouth fails to meet a specific number of the Tier 3 submetrics for three consecutive months. (See *Georgia/Louisiana Order*, footnote 1136) While not specifically advocated by any of the Parties, the Commission finds merit in the approach originally proposed by BellSouth and believes that the public interest is best served by a penalty that would have BellSouth voluntarily suspend additional marketing and sales of long distance service under certain circumstances. The Commission concludes therefore that BellSouth should adopt and include a similar Tier 3 in its penalty plan for North Carolina.

CONCLUSIONS

The Commission concludes that BellSouth should adopt a Tier 3 penalty whereby it would voluntarily suspend additional marketing and sales of long distance services if it fails to meet a specific number of the Tier 3 submetrics for three consecutive months.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

R-ENF-18: Should remedies apply to performance measures that are shown to be duplicative of or "correlated" with other measures?

R-ENF-19: What measures in the BellSouth SQM document are duplicative or correlated with other measures?

POSITIONS OF PARTIES

BELLSOUTH: Multiple penalties should not be paid for failure of correlated measures.

CLP COALITION: The decision of whether or not to apply a remedy depends on the strength of the correlation between measures. An analysis of the data is required to make a determination. The data-dictated degree of correlation will determine whether remedies are appropriate. If a thorough and appropriate data investigation discloses that two measures are highly correlated, then they are in effect measuring the same thing. In that case, applying penalties to each of them could double the consequences, and remedies are not appropriate for both measures. If the correlation is determined to be small to moderate, the metrics are not measuring the same thing and remedies should apply. All measures should be included in the remedy plan until such time as an independent analysis shows that the measures are highly correlated and duplicative.

PUBLIC STAFF: It does not appear that the CLP Coalition attempted to take correlation into consideration as is evidenced by the suggestion that all measurements in the SQM plan should be included as part of the enforcement plan. [**NOTE:** The Public Staff addressed ENF-15 and ENF-18 together in Finding of Fact No. 23. The Public Staff addressed ENF-19 separately in Finding of Fact No. 2. The Commission will attempt to only present the Public Staff's position on ENF-18 and ENF-19 in this issue.]

DISCUSSION

BellSouth stated in its Proposed Order that its position is that when measurements are correlated, BellSouth should not pay multiple penalties for a single failure. BellSouth noted that consistent with this position, it has identified certain correlated measures for which there should be no penalties. BellSouth maintained that the CLP Coalition appears to agree, at least in concept, that multiple penalties should not be paid for the failure of correlated measures. BellSouth maintained that the issue of whether there are correlated measures in BellSouth's plan is in dispute.

BellSouth noted that its witness Varner testified as follows:

> Attached, as Exhibit AJV-7, is a matrix which shows measurements in the BellSouth SQM that BellSouth feels are duplicative or are correlated with other measures. While the overlap is not always absolute, the measures are clearly related and to avoid an inappropriate duplication only one of each class of interdependent measures should be used. To do otherwise would subject BellSouth to the possibility of making multiple payments for the same failure.

BellSouth argued that the CLP Coalition's position is considerably less clear. BellSouth noted that AT&T witness Bursh appears to view correlation as a topic involving considerable mystery while at the same time, MCIm witness Kinard attached to her prefiled rebuttal testimony what purports to be her analysis of witness Varner's analysis and her own conclusions about the correlation. BellSouth maintained that since an industry-developed correlation analysis has not been performed, witness Kinard obviously rendered what witness Bursh would consider to be merely a guess. Also, BellSouth argued, it is unclear what witness Kinard considers to be the result of her analysis. BellSouth stated that witness Kinard appears to be saying that measures need to be in the plan because they provide some additional increment of information, but to the extent they are correlated, these duplicative payments need not be made.

BellSouth maintained that the confusion is only compounded by a review of witness Kinard's Exhibit KK-E. BellSouth argued that witness Kinard offers no opinion on this exhibit as to whether measures are truly correlated, but instead only addresses how each measurement in intended to measure something different. BellSouth stated that the CLP Coalition position becomes even murkier when one considers that at the hearing, witness Kinard acknowledged that she gave testimony in Florida that seemed to amount to an admission that there is correlation among measures in the plan. However, BellSouth noted, witness Kinard attempted to qualify her Florida testimony by saying that she was really referring to correlation as defined in some manner other than necessarily entailing duplicate penalties. BellSouth further noted that the following exchange then occurred:

> Q. (Mr. Carver) Have you performed yourself any correlation analysis?
>
> A. (Ms. Kinard) No.

BellSouth stated that the Commission can only guess as to what witness Kinard's answer means. BellSouth offered that perhaps witness Kinard forgot that she developed the analysis in Exhibit KK-E, perhaps someone else developed it, or maybe she developed it, but really does not consider it to be a correlation analysis at all. BellSouth asserted that there is simply no way to know.

BellSouth concluded that the only thing clear about the CLP Coalition position is that the CLPs want penalties to be paid, even when measures are correlated, because this will further the paramount CLP goal in this proceeding – securing excessive penalty payments. BellSouth recommended that the Commission conclude that the confused and contradictory testimony of the CLP Coalition on this point fails totally to support the improper result the CLP Coalition seeks.

BellSouth witness Varner stated in rebuttal testimony that the CLP Coalition plan makes no attempt to account for the fact that measures can be correlated. Witness Varner maintained that the CLP Coalition has noted that correlation may be a problem, but suggest that it would have to be addressed later, since no studies or analysis has been done to determine which of the measures are correlated to other measures. Witness Varner asserted that what the CLP Coalition really is saying is that it is okay for BellSouth to pay multiple penalties for the same transaction which witness Varner argued is not fair on its face, much less in application.

On cross-examination, witness Varner agreed that BellSouth made the decision in-house of which measures constituted correlated measures.

The CLP Coalition stated in its Proposed Order that it and BellSouth agree that BellSouth remedies should not apply to measures that are shown to be duplicative or highly correlated. However, the CLP Coalition noted, the Parties disagree regarding the procedure that is necessary to determine if measures are duplicative or correlated. The CLP Coalition stated that BellSouth has identified a number of measures that it feels are duplicative or correlated, however, has not conducted any formal analysis in making its determination.

The CLP Coalition stated that its witness Bursh testified that an industry-developed correlation analysis is required to determine whether there exists any correlation between measures and that until an industry-developed correlation analysis can be conducted, any determination regarding the correlation between measures is merely a guess. Therefore, the CLP Coalition asserted, no measures should be excluded based upon alleged correlation between measures. The CLP Coalition stated that as an alternative, it proposes the creation of "families" of measures for the purpose of applying remedies where correlation between measures is suspected. The CLP Coalition proposed that each measurement family would be eligible for only a single remedy and whether and to what degree a measurement family is eligible for a consequence would be determined by the worst performing individual measurement result within the family for the month under consideration. The CLP Coalition also argued that the use of measurement families eliminates the possibility of double jeopardy without making any advance judgment regarding the usefulness of individual measurements.

The CLP Coalition, however, warned that the establishment of measurement families must be approached with extreme caution and sparingly used. The CLP Coalition stated that at a minimum, the following conditions must be imposed:

(1) measurements that address separate support functionality may not be placed in the same family;
(2) measurements that address different modes of market entry may not be placed in the same family;
(3) measurement families may not be used as a means to avoid disaggregation detail;
(4) measurements that address (a) timeliness, (b) accuracy, and (c) completeness may not be placed in the same family;
(5) measurement families, to the extent used, must be identical across all CLPs; and
(6) even if correlation can be demonstrated, measurement families must not be used to combine otherwise independent measurements of a deficient process.

The CLP Coalition recommended that the Commission agree with the Parties that BellSouth should not be required to pay two remedies for measures that are duplicative or highly correlated. The CLP Coalition also proposed that the Commission find that it is not convinced that all of the measures BellSouth has designated as correlated will result in the payment of two remedies for a single failure. The CLP Coalition also proposed that the Commission find that it is concerned that the elimination of measures from the plan on the basis of correlation could result in the payment of no remedy for a particular failure. The CLP Coalition recommended that the Commission find that the CLPs' proposed measurement families concept is worth exploring and direct the CLP Coalition to provide the Commission with its proposal for grouping measures suspected of being correlated into families within 30 days of its Order in this docket.

CLP Coalition witness Kinard stated in rebuttal testimony that the CLPs do not agree that metrics are correlated in the manner that BellSouth claims.

Witness Kinard agreed on cross-examination that measures are correlated when missing one measurement necessarily means that another measurement will also be missed. However, later during cross-examination, witness Kinard stated that what she means by correlation is "that you need to put both in the plan." Witness Kinard also stated that she had not performed any correlation analysis.

CLP Coalition witness Bursh stated in direct testimony that the decision whether or not to apply a remedy depends on the strength of the correlation between measures. Witness Bursh argued that because a measure appears to be duplicative or correlated does not mean that it is. Witness Bursh commented that an analysis of the data is required to make a determination and that without data, there cannot be any correlation determination. Witness Bursh argued that the industry (the CLPs, BellSouth, and the North Carolina Utilities Commission) has not agreed upon or implemented tests to assess the possibility of correlation between BellSouth's measures in North Carolina. Therefore, witness Bursh asserted, there is currently no basis for exempting measures from remedies due to correlation.

Witness Bursh argued in rebuttal testimony that there has been no industry-developed correlation analysis conducted to validate the content of witness Varner Exhibit AJV-7. Witness Bursh reiterated that without data and an analysis of the data, no determination on correlated measures can be made.

Addressing BellSouth's argument of excluding measures that are parity by design, witness Bursh argued that before the CLPs can understand and agree with BellSouth's designation of measures as parity by design, an audit is required by an independent third party to determine if parity by design exists. Witness Bursh maintained that the third party should demonstrate an unbiased, open posture regarding its methods and procedures of evaluation.

The Public Staff stated in its Proposed Order that the measures in its proposed North Carolina SQM are not unduly duplicated by or correlated with any other measures.

The Commission believes that there is simply inadequate evidence in the record concerning the issue of correlated measures. The Commission believes that remedies should not be applied to performance measures that are shown to be duplicative of or correlated with other measures but believes that there is inadequate evidence in the record to determine which measures, if any, in the BellSouth SQM are duplicative or correlated. Therefore, the Commission concludes that there is insufficient evidence in the record to determine which measures, if any, in the BellSouth SQM are duplicative or correlated with other measures. The Commission further instructs BellSouth, the CLP Coalition, and the Public Staff to continue to work on this issue through the negotiation process and file a report with the Commission on the issue of duplicative or correlated measures no later than July 22, 2002. Finally, the Commission concludes that until this issue is negotiated, the SQM should include BellSouth's proposal on this issue.

CONCLUSIONS

The Commission concludes that there is insufficient evidence in the record to determine which measures, if any, in the BellSouth SQM are duplicative or correlated with other measures. The Commission instructs BellSouth, the CLP Coalition, and the Public Staff to continue to work on this issue through the negotiation process and file a report with the Commission on the issue of duplicative or correlated measures no later than July 22, 2002. Finally, the Commission concludes that until this issue is negotiated, the SQM should include BellSouth's proposal on this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

R-ENF-20: Should remedies apply to performance measures that reflect manual and partially mechanized processing?

POSITIONS OF PARTIES

BELLSOUTH: Penalties should not apply to the manual ordering process.

CLP COALITION: Remedies should apply to performance measures that reflect manual and partially mechanized processing. Discriminatory performance can occur no matter what level of mechanization. Accordingly, remedies should be applied to submeasures that report on manual and partially mechanized order processing.

PUBLIC STAFF: The Public Staff did not address this issue with any specificity in its Proposed Order.

DISCUSSION

BellSouth stated in its Proposed Order that AT&T witness Bursh contended that because discriminatory performance can occur no matter what the level of mechanization, performance remedies should apply to manual and partially mechanized measures. BellSouth stated that generally it agrees, and penalties do apply under the SEEM plan to measures that are categorized as manual and partially mechanized. BellSouth asserted that the narrow dispute in this issue concerns whether to apply penalties to the manual ordering process.

BellSouth noted that its witness Varner explained that 75% of the total orders submitted are fully mechanized. Therefore, BellSouth asserted, the remaining 25% are processed manually. BellSouth noted that manual orders are submitted by fax and partially mechanized orders are submitted electronically, but for some reason, require manual intervention. BellSouth argued that automatic penalties should not apply to the ordering measures for these types of orders because of the high likelihood that penalties will be triggered through no fault of BellSouth.

BellSouth noted that witness Varner testified that virtually anything can be ordered manually, including complex orders that require time consuming manual effort. Likewise, BellSouth asserted, partially mechanized orders are complicated requests that, although submitted electronically, fall out for manual processing. BellSouth maintained that given the complexity of both types of orders, the processing time and effort will vary widely from order to order. BellSouth argued that given this, the Commission should conclude that the application of an automatic penalty when orders are not processed in a certain time is not appropriate. However, BellSouth noted, witness Varner testified that these orders are subject to all available remedies if a problem occurs otherwise.

BellSouth witness Varner stated in direct testimony that in some cases in the Tier I SEEM measures, the performance measures reflect both manual and partially mechanized processing. Witness Varner noted that each of these cases is reflected in the SEEM section associated with the measurements in Exhibit AJV-1 - the BellSouth SQM.

In rebuttal testimony, witness Varner argued that the CLPs' proposal to assess penalties on the manual ordering process should not be adopted. Witness Varner maintained that there are two types of orders at issue here, manual orders and partially mechanized orders. Witness Varner stated that both types of orders are processed manually. However, witness Varner commented, partially mechanized orders are orders submitted electronically that require manual intervention while manual orders are submitted via fax machine. Witness Varner noted that

BellSouth is proposing that penalties applicable for other operations, such as repair and provisioning, apply to all types of orders. Witness Varner clarified that the dispute here concerns penalties associated with ordering measurements only.

Witness Varner continued that BellSouth proposes to have automatic penalties apply to fully mechanized orders. Witness Varner stated that fully mechanized orders account for about 75% of the total orders processed, so the dispute here is over the remaining 25% of orders. Witness Varner argued that automatic penalties should not apply to partially mechanized and manual orders because it is too likely that penalties could be triggered through no fault of BellSouth. Witness Varner maintained that since the complexity of manual and partially mechanized orders could vary widely from month-to-month, the time and effort required to fulfill them will vary widely. Witness Varner concluded that with such wide potential variations in performance simply due to the complexities of orders that happen to be submitted that month, automatic penalties should not apply.

The CLP Coalition stated in its Proposed Order that AT&T witness Bursh testified that discriminatory performance can occur no matter what the level of mechanization. The CLP Coalition noted that witness Bursh testified that manual orders can represent key aspects of a CLP's business and that in some cases, for example, branded OS/DA, CLPs have no choice but to use nonmechanized ordering. Therefore, the CLP Coalition noted, witness Bursh contended that remedies should be applied to submeasures that report on manual and partially mechanized order processing.

The CLP Coalition noted that BellSouth is proposing to have automatic penalties apply to fully mechanized orders but not to partially mechanized or manual orders.

The CLP Coalition proposed that the Commission agree with the CLPs that discriminatory performance by BellSouth can occur at any level of mechanization and that partially mechanized orders are designed by BellSouth to fall out of its systems for manual processing. The CLP Coalition contended that in some circumstances CLPs have no choice but to use nonmechanized ordering. The CLP Coalition recommended that the Commission conclude that it is unwilling to allow 25% of CLP orders to go without a remedy simply because of the manner in which the order is placed. The CLP Coalition argued that to do so would not provide BellSouth with any incentive to improve its level of mechanization.

The CLP Coalition proposed that the Commission conclude that the concerns expressed by BellSouth regarding the complexity of partially mechanized and manual orders can be addressed by allowing for longer intervals for the processing of partially mechanized and manual orders. The CLP Coalition recommended that the Commission find that BellSouth's fears regarding CLPs gaming the system in order to guarantee a penalty payment unreasonable. The CLP Coalition noted that the Florida Commission also required that BellSouth pay penalties for failures in the partially mechanized and manual categories on two ordering metrics: O-8 Reject Interval and O-11 FOC and Reject Response Completeness. The CLP Coalition recommended that the Commission conclude that BellSouth should pay remedies on performance measures adopted by the Commission that reflect manual and partially mechanized processing.

The Commission notes that the Florida Public Service Commission stated in its September 10, 2001 *Order*

> In addition to the changes to product disaggregation, we find that for two BellSouth-proposed measures the company [would] only pay penalties in the "fully mechanized" category of disaggregation. We find that the penalties for these two metrics, O-8 Reject Interval and O-11 FOC and Reject Response Completeness not be limited to fully mechanized. Penalties shall be paid for failures in partially mechanized and non-mechanized categories as well.

The Commission agrees with the CLP Coalition that discriminatory performance can occur no matter what the level of mechanization. The Commission also believes that there is no justification for not applying remedies to all levels of mechanization from electronic (mechanized), to partially mechanized, to manual. The Commission believes that it is reasonable to expect BellSouth to pay penalties on orders that fail to meet the appropriate standard whether the order is electronic (mechanized), partially mechanized, or manual.

CONCLUSIONS

The Commission concludes that remedies should apply to performance measures that reflect manual and partially mechanized processing.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

R-ENF-21: When should any remedy plan adopted by the Commission go into effect?

POSITIONS OF PARTIES

BELLSOUTH: The enforcement provisions of any plan approved by the Commission should not go into effect until after BellSouth receives Section 271 relief and is able to provide long distance service in North Carolina.

CLP COALITION: Self-executing remedies are needed to enforce the Section 251 market opening provisions of TA96 and are not solely designed to prevent Section 271 backsliding. There must be a plan in place to ensure swift and appropriate action if BellSouth does not provide access to services and facilities in a nondiscriminatory manner as required by TA96. The remedy plan should become effective as soon as it is adopted by the Commission.

PUBLIC STAFF: The enforcement plan should become effective 30 days from the issuance of the Commission's Order in this docket.

DISCUSSION

BellSouth stated in its Proposed Order that setting the effective date of an SQM involves two distinct questions: (1) when can the plan be implemented; and (2) when should the plan become effective in order to serve the purpose for which it is intended? BellSouth maintained that if the Commission adopts BellSouth's proposal, the plan can be put into effect in a relatively short time frame. BellSouth argued that if the Commission approves some or all of the plan proposed by the CLP Coalition, BellSouth avers that the issue of when the plan can be implemented is much less clear.

BellSouth asserted that the question of when both the measurement and penalty aspects of the plan can be implemented is a technical question. BellSouth stated that on the one hand, the question of when the penalty aspect of the plan should be implemented is a policy question. BellSouth argued that as a matter of policy, the Commission should find that the enforcement provisions of any plan approved by the Commission should not go into effect until after BellSouth receives Section 271 relief and is able to provide long distance service in North Carolina.

BellSouth maintained that the FCC has never indicated that it considers the existence of an enforcement plan to be a prerequisite to Section 271 relief. Instead, BellSouth asserted, the FCC has plainly stated that the penalty plan is simply one way to satisfy the public interest requirements of Section 271 by ensuring that there will be no backsliding by the respective RBOC after Section 271 authority is granted. BellSouth stated that while the FCC has encouraged state performance monitoring and post-entry level enforcement, it has never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of Section 271 approval.

BellSouth noted that the CLP Coalition, through witness Bursh, contended otherwise and testified that local competition will not develop without a penalty plan and that BellSouth has no incentive to comply with a performance plan without penalties. BellSouth believes that the CLP Coalition is wrong on both counts.

BellSouth maintained that the entire purpose of the remedy aspect of an enforcement plan is to prevent backsliding post-Section 271 and that the CLP Coalition has provided no legitimate reason to implement a penalty plan pre-Section 271. Indeed, BellSouth asserted, there is none.

BellSouth witness Varner agreed on cross-examination that BellSouth contends that the sole purpose of an enforcement mechanism is to prevent backsliding after it begins providing long distance service. Witness Varner explained that the Commission needs a set of performance measurements in place to monitor BellSouth's performance to make an assessment for Section 271 purposes but not a remedy plan. Witness Varner further agreed that Georgia and Louisiana are the only two BellSouth states that have addressed the issue of when a penalty plan should be put into effect and both disagreed with BellSouth's position on the issue.

The CLP Coalition stated in its Proposed Order that contrary to BellSouth's belief, avoiding backsliding after Section 271 approval is granted is only one of the purposes of a remedy plan. The CLP Coalition maintained that a well-developed remedy plan serves several important purposes, as follows:

(1) It promotes the initial development of competition by providing the incentive for BellSouth to allow nondiscriminatory access to its network required by Section 251 of TA96.

(2) Once competition develops, self-enforcing penalties help to guarantee that BellSouth will continue to provide CLP customers with the same quality of service it provides to its retail customers.

(3) Where BellSouth does provide discriminatory or non-parity service to CLP customers, penalties are paid to CLPs to partially defray the additional costs attributable to inferior service provided by BellSouth.

(4) Uncovering discriminatory service may lead to the discovery of underlying problems in BellSouth's systems and/or procedures.

(5) Rather than waiting for problems to be discovered, the prospect of remedies for discriminatory performance will provide an incentive for BellSouth to take proactive steps to avoid providing poor quality performance to CLPs.

(6) Adverse consequences for discriminatory behavior will discourage backsliding once BellSouth has attained approval to enter the interLATA market.

The CLP Coalition stated that the varied purposes served by a remedy plan make it essential to institute such a plan as soon as possible. The CLP Coalition noted that other state commissions have recognized that enforcement plans should be implemented prior to an ILEC receiving Section 271 approval, noting specifically Pennsylvania.

The CLP Coalition argued that BellSouth has the obligation to provide parity service to CLPs under Section 251 whether or not BellSouth applies for Section 271 relief. The CLP Coalition maintained that nothing in TA96 prohibits the Commission from implementing an enforcement plan to ensure that BellSouth complies with its obligations to provide parity service under Sections 251 and 252 of TA96. In fact, the CLP Coalition noted, both the Georgia and Louisiana Commissions have directed that their enforcement plans would be effective prior to BellSouth receiving approval to offer interLATA service.

The CLP Coalition maintained that as evidenced by the testimony of Access Integrated Network, Birch, Mpower, and Covad, many CLPs are currently experiencing problems with the quality of service they are receiving from BellSouth. The CLP Coalition argued that an appropriate penalty plan will encourage BellSouth to provide nondiscriminatory service during the critical early stages of competition, while providing some compensation to CLPs for the additional costs they incur when BellSouth's performance falls short. The CLP Coalition recommended that the Commission adopt the CLP Coalition's proposed remedy plan, effective 30 days from the issuance of the Commission's Order in this docket.

The Public Staff stated in its Proposed Order that while it agrees with BellSouth that an enforcement plan is necessary to prevent backsliding after Section 271 authority is granted, the CLPs clearly should receive nondiscriminatory service from BellSouth under Section 251 of TA96. The Public Staff maintained that only if BellSouth provided service that was discriminatory or not at parity would BellSouth be required to pay any penalties. The Public Staff noted that the FCC did not indicate that a remedy plan was only to be implemented after a BOC receives Section 271 authority.

The Public Staff further noted that several CLPs currently operating in North Carolina testified that they are receiving poor service from BellSouth. The Public Staff maintained that a remedy plan could provide immediate benefit to such CLPs. The Public Staff also noted that Georgia and Louisiana have both required an enforcement plan to be implemented before BellSouth obtains Section 271 approval. The Public Staff stated that the enforcement plan proposed by the Public Staff very closely mimics the plan that BellSouth currently has in place in Georgia and thus, BellSouth should be able to implement this plan soon after the Commission issues its Order. The Public Staff concluded that for these reasons, it believes that it is appropriate for the SQM and enforcement plan to become effective as soon as the Commission's Order becomes final. Therefore, the Public Staff recommended that the Commission find that the enforcement plan should become effective 30 days from the issuance of the Commission's Order in this docket.

The Commission agrees with the CLP Coalition and the Public Staff that it is reasonable and appropriate for the remedy plan to become effective 30 days after the issuance of this Order. The Commission agrees that Section 251 requires that CLPs receive nondiscriminatory service from BellSouth and that a remedy plan would provide an effective means of ensuring that BellSouth provides nondiscriminatory service or face paying penalties. Further, the Commission notes that the Florida, Georgia, and Louisiana Commissions have all required BellSouth to implement its remedy plan prior to Section 271 approval. The Commission concludes that the remedy plan should become effective on June 21, 2002.

CONCLUSIONS

The Commission concludes that the remedy plan should become effective on June 21, 2002.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

R-ENF-22: Should the performance standards to be applied in the remedy plan differ from the performance standards that apply to measure nondiscriminatory performance in the performance measurement plan?

POSITIONS OF PARTIES

BELLSOUTH: With two exceptions, the performance standards to be applied in the penalty plan should be the same as the performance standards that apply to measure nondiscriminatory performance in the SQM.

CLP COALITION: Basing remedies and reporting performance on different performance standards would be both confusing and meaningless.

PUBLIC STAFF: To the extent that the analogs and benchmarks for a measure in the current Georgia plan are more stringent than those in the current North Carolina SEEM, the Commission should require BellSouth to match the Georgia benchmarks.

DISCUSSION

BellSouth noted in its Proposed Order that the CLP Coalition believes that the performance standards should be the same for both measurements and penalties. BellSouth stated that it agrees with the two exceptions articulated by BellSouth witness Varner: (1) the SEEM measurements sometimes aggregate several SQM submeasures which may necessitate using a slightly different standard; and (2) where a SEEM standard is in Tier 2, it may be appropriate to use a different standard from the SQM since Tier 2 is supposed to address chronic, persistent, material disparity.

The CLP Coalition noted in its Proposed Order that neither BellSouth nor the CLP Coalition has offered much discussion on this issue. The CLP Coalition maintained that BellSouth has offered no reasonable or compelling reason why performance standards in the remedy plan should differ from those used to measure BellSouth's performance for reporting purposes. The CLP Coalition recommended that the Commission agree with the CLPs that basing remedies and reporting performance on different reporting standards would unnecessarily confuse the process. Therefore, the CLP Coalition recommended that the Commission conclude that the performance standards to be applied to performance reporting and remedies should be the same.

CLP Coalition witness Bursh asserted that basing remedies and reporting performance on different performance standards would be both confusing and meaningless.

The Public Staff noted in its Proposed Order that it is recommending that the analogs and benchmarks in the North Carolina SEEM mirror the analogs and benchmarks in the Georgia plan. The Public Staff recommended that the Commission conclude that BellSouth should be capable of simultaneously offering the same level of service to its North Carolina CLP customers that it does to its Georgia CLP customers. Therefore, the Public Staff proposed that the Commission find that to the extent that the analogs and benchmarks for a measure in the current Georgia plan are more stringent than those in the current North Carolina SEEM, the Commission should require BellSouth to match the Georgia benchmarks.

The Commission does not believe that BellSouth provided adequate justification and evidence for the two exceptions of standards that it proposed. The Commission agrees with the CLP Coalition that it is appropriate to apply the same standards for reporting and remedies. The Commission believes that application of different performance standards to the remedy plan versus the performance measurement plan would be inappropriate and unfair.

CONCLUSIONS

The Commission concludes that the same performance standards should be applied in the remedy plan and the performance measurement plan.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

R-MSC-1: Should there be periodic reviews of BellSouth's performance measures systems (as distinguished from an audit)? If so, what should be the frequency and scope of such reviews?

POSITIONS OF PARTIES

BELLSOUTH: There should be periodic reviews of BellSouth's performance measures systems.

CLP COALITION: The Commission should conduct periodic reviews of BellSouth's performance plan to determine if existing metrics and remedies are adequate and to require future improvements that enable BellSouth to provide services more efficiently. Such reviews would examine "all existing metrics, rules, calculations, disaggregation and standards; the need for new metrics; the need to eliminate or revise useless metrics; and the adequacy of the current remedy plan.

PUBLIC STAFF: The proposal for review established by the Florida PSC Staff and included in Appendix B of BellSouth's and the CLP Coalition's June 8, 2001 Report on Interim Conference filed in North Carolina should be approved with the modifications as specified by the Public Staff in its Proposed Order.

DISCUSSION

In BellSouth's Brief, witness Varner described BellSouth's position on this issue as follows:

> During the first two years of implementation, BellSouth proposes to participate in six-month review cycles starting six months after the date the NCUC order in this proceeding is implemented by BellSouth. A collaborative work group, which will include BellSouth, interested CLPs and the Commission, will review the SQM for any desired additions, needed deletions or other modifications. After two years from the date of the order, the review cycle may, at the discretion of the Commission, be reduced to an annual review.

BellSouth further stated that it does not believe that any party to this proceeding opposes its proposal. Furthermore, BellSouth stated that CLP Coalition witness Kinard discusses and advocates in her testimony a periodic review process that is similar to BellSouth's proposal.

In its Proposed Order, the CLP Coalition stated that competition in the residential market is embryonic, given that BellSouth has only recently provided the UNE P platform. Further, BellSouth may and should develop new functionalities that will need to be measured. As an example, the CLPs stated that if the Commission were to require BellSouth to provide particular notices of changes, then a metric may need to be adopted (or an existing metric expanded) to measure BellSouth's performance in this area.

As such, the CLPs stated that there should be a periodic metric and remedies plan review. As stated by the CLPs, the review should be designed to determine if metrics and remedies are sufficient as they are or require additions, deletions or modifications to promote competition. Hence, the scope of the review should include all existing metrics, rules, calculations, disaggregations and standards; the need for new metrics; the need to eliminate or revise useless metrics; and the adequacy of the current remedy plan. The CLPs stated that a six-month review is appropriate for the plan adopted by the Commission.

In its Proposed Order, the Public Staff stated that CLP Coalition witness Kinard recommended that the Commission should conduct periodic reviews of BellSouth's performance plan to determine if existing metrics and remedies are adequate and to require future improvements that enable BellSouth to provide services more efficiently. The Public Staff stated that such reviews would examine "all existing metrics, rules, calculations, disaggregation and standards; the need for new metrics; the need to eliminate or revise useless metrics; and the adequacy of the current remedy plan."

The Public Staff noted that on June 8, 2001, the CLP Coalition and BellSouth filed a Report on Interim Conference in which the parties concurred in the review process recommended by the Florida PSC staff. According to the Public Staff, the Florida proposal would require BellSouth and the CLP Coalition to participate in semiannual reviews of the performance plan during the plan's first two years of operation. The Public Staff stated that the reviews during the second and succeeding years would be held either annually or semiannually, at the Commission's discretion. The first review would begin six months following the issuance of the Commission order approving the plan. The Public Staff further stated that one month prior to the review date, BellSouth and the CLPs would file their proposed changes for consideration. Also, as stated by the Public Staff, the Florida proposal contains language affirming the Commission's authority to modify or amend the plan in the future and settle any disputes involving the performance measures or the enforcement plan.

The Public Staff stated that modifications would be required to the Florida proposal before adopting it for use in North Carolina as outlined in the Public Staff's Proposed Order. The Public Staff further stated that BellSouth and the CLP Coalition be directed to revise the Florida document jointly, consistent with the Public Staff's recommended modifications and to file a copy with the Commission 30 days following the issuance of the Commission's final order in this docket. The Public Staff's recommended modifications are as follows:

(1) The heading for this document should be changed to "North Carolina Performance Measure and Enforcement Plan – Review Cycle."

(2) The paragraphs should be renumbered 1.1, 1.2, 1.3, and 1.4

(3) The terminology within the document should be amended to reflect nomenclature specific for North Carolina.

(4) Paragraph 1.2 (originally paragraph 3.2) should be amended to read:

1.2 BellSouth and the CLPs shall file any proposed revisions to the SQM and SEEM at the beginning of each review period. Filings of proposed revisions for the initial review cycle will be due six months from the date that a final order approving an SQM and SEEM is issued in this docket.

Filings proposing revisions to the SQM and SEEM must include the following elements:

a. Electronic and hard copies of the current SQM and SEEM that have been clearly marked to indicate the proposed changes, by striking out text to indicate deletions, and underlining text to indicate additions;

b. A matrix, in both hard copy and electronic formats, listing the proposed changes page-by-page and providing a concise, clear explanation of the reasons for each change; and

c. any necessary supporting documentation, cross-referenced to the matrix by using endnotes or footnotes. These should also be filed in both hard copy and electronic formats, if possible.

The Commission notes that BellSouth and the CLP Coalition provided a joint report on June 8, 2001, which adopted the Florida Staff proposal addressing the need and requirement for periodic performance reviews and the critique of related metrics. The Public Staff also adopted the Florida Staff proposal, but recommended specific modifications as shown above. The Commission concludes that BellSouth and the CLP Coalition should revise the Florida document consistent with the Public Staff's recommended modifications and file a copy with the Commission no later than June 21, 2002, with the exception that Paragraph 1.2 (originally paragraph 3.2) should be changed to read "twelve months" instead of "six months".

The Commission believes annual reviews would be a more reasonable and practical interval for formal reviews, rather than holding a review every six months during the first two years. The Commission encourages collaborative efforts by BellSouth, the CLPs, and the Public Staff to identify and resolve as many issues as possible before seeking Commission approval of amendments to the performance plan and remedy plan in the annual review. In concluding that reviews should be held annually rather than semi-annually, the Commission recognizes the possibility that amendments may be necessary between annual reviews. If a Party, or preferably, Parties participating in collaborative efforts, believes that the performance plan or remedy plan must be amended before the next annual review, a petition may be filed for Commission consideration in support of the requested amendments. Such a petition should clearly identify the specific amendments requested and state why the Commission should approve any such amendment prior to the next annual review.

CONCLUSIONS

The Commission concludes that BellSouth and the CLP Coalition should revise the Florida document consistent with the Public Staff's recommended modifications and file a copy with the Commission no later than June 21, 2002, with the exception that Paragraph 1.2 (originally paragraph 3.2) should be changed to read "twelve months" instead of "six months". The Commission also concludes that annual reviews would be a more reasonable and practical interval for formal reviews, rather than holding a review every six months during the first two years. Further, the Commission encourages collaborative efforts between BellSouth, the CLPs, and the Public Staff to identify and resolve as many issues as possible before seeking Commission approval of amendments to the performance plan and remedy plan in the annual review. Lastly, the Commission concludes that, if a Party, or preferably, Parties participating in collaborative efforts, believes that the performance plan or remedy plan must be amended before the next annual review, a petition may be filed for Commission consideration in support of the requested amendments. Such a petition should clearly identify the specific amendments requested and state why the Commission should approve any such amendment prior to the next annual review.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

R-MSC-2: What is the appropriate definition of "affiliates" for purposes of BellSouth's reporting of performance results in its SQM report?

R-MSC-3: What, if any, access should BellSouth provide to data regarding its performance to affiliates?

R-MSC-4: Should BellSouth's performance to its affiliates become a standard for comparison where that performance is superior to BellSouth's performance to its retail customers?

POSITIONS OF PARTIES

BELLSOUTH: An ILEC's performance with regard to its affiliate plays no role in the FCC's analysis. It is not unreasonable for BellSouth to combine its affiliates' data with other CLPs' data.

CLP COALITION: CLPs should have access, upon request, to all data included and excluded from the report to determine whether reporting is accurate. CLPs are especially concerned about data being wrongly excluded and want to be able to bore down to the original records. CLPs do not agree that the FCC would not consider discrimination in favor of an affiliate in approving a Section 271 application. Any time BellSouth's affiliates resell BellSouth's retail services or buy the same types of interconnection services or UNEs, it is appropriate to compare the affiliate's treatment to the way BellSouth's CLP competitors are treated.

PUBLIC STAFF: BellSouth should file separate monthly reports with the Commission and Public Staff on the performance it provides to: (1) BellSouth Telecommunications, Inc.; (2) BellSouth BSE, Inc.; and (3) CLPs in the aggregate, excluding data and results for BellSouth Telecommunications, Inc. and BellSouth BSE, Inc. The Commission should decline to require BellSouth to report performance results for its other affiliates.

DISCUSSION

In BellSouth's Brief, witness Varner testified that, the term "affiliate" is defined in the Act. Specifically, the Act provides the following:

> AFFILIATE - the term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten percent. 47 U.S.C. 153(1)

BellSouth stated that the real issue is not how the term "affiliate" should be defined, but whether (and in what circumstances) BellSouth's performance related to transactions with its affiliates should be considered in a performance assessment plan. BellSouth further stated that the only performance data of BellSouth affiliates that should be considered is the data that can be used to make "apples to apples" comparisons with the services provided to CLPs. As stated by BellSouth, under this standard, the only BellSouth affiliate that should report data is the one that provides local service in North Carolina, i.e., a BellSouth-affiliated CLP.

BellSouth stated in its Proposed Order that the Parties agree that information related to BellSouth affiliates should not be used at this time to measure BellSouth's performance, or as the basis for any penalty. As further stated by BellSouth, thus, Issue R-MSC-4 is not really in dispute since no Party is advocating that BellSouth affiliate data be used as part of the performance plan at this time. BellSouth opined that the dispute regarding affiliate reporting comes down to two specific issues: (1) what data should be reported, or, put differently, which affiliate should report data; and (2) to whom should this data be reported. BellSouth stated that BellSouth requests only more limited reporting than that urged by the CLPs. BellSouth stated that when a CLP believes that BellSouth has shown preference to its affiliates, the Commission can decide what affiliate data is appropriate for an apples-to-apples comparison between the CLPs and any BellSouth affiliate that is in a position comparable to that of the CLPs.

The CLP Coalition in its Proposed Order stated that, access to raw data used to create performance reports is essential to a CLP's ability to validate the performance data and reports provided by BellSouth.

The CLP Coalition stated that when an affiliate is created and starts ordering through the same systems and processes as the CLPs, this creates a retail analog where none existed before. Further, the CLPs stated that while the ILEC itself never ordered collocations, or received FOCs or rejects, its affiliate will order collocations and receive the same order status notices as the CLPs. Thus, as stated by the CLPs, where the affiliate is ordering the same types of services as the CLPs, its activities can either be used for parity comparisons or to reset a benchmark to what might be more favorable intervals received by the affiliate.

As stated by the CLP Coalition, BellSouth should include in its reporting all affiliates that buy interconnection or unbundled elements or that resell BellSouth's services. Furthermore, such affiliates would include any future BellSouth long distance affiliate, to ensure it is not being given more favorable treatment than BellSouth's combined local and long distance competitors. The CLP Coalition opined that affiliate reporting should include all affiliates that purchase wholesale services from BellSouth and the term "affiliate" should be defined pursuant to the definition of that term in the Act. The CLPs stated that the affiliate information should be reported separately by each affiliate (data, wireless, future long distance, or other) with activity in the metric category.

The Public Staff commented that the CLP Coalition proposed that BellSouth provide monthly reports on the quality of service it provides to any affiliates using the metrics adopted in this docket. Furthermore, the CLP Coalition recommended that BellSouth report separate statistics for each affiliate that purchases wholesale services from it, whether the affiliate was providing or planned to provide data, wireless, long distance, or any other type of service.

The Public Staff pointed out that BellSouth opined that reporting requirements be limited to BellSouth's CLP, since it is the only affiliate that provides local services. Additionally, the Public Staff commented that BellSouth proposed that if the Commission required reporting of all affiliates, comparisons should be limited to cases where BellSouth provides identical wholesale services to both the affiliates and to the CLPs.

As stated by the Public Staff, BellSouth should file monthly reports with the Commission and the Public Staff on the performance it provides to the following CLPs in North Carolina: (1) BellSouth Telecommunications, Inc.; (2) BellSouth BSE, Inc.; and (3) CLPs in the aggregate, excluding data and results for BellSouth Telecommunications, Inc. and BellSouth BSE, Inc. The Public Staff stated that BellSouth should not be required to report performance results for its other affiliates. The Public Staff concluded that there is no evidence in the record to demonstrate that BellSouth's performance with regard to its affiliates should become a standard for comparison where that performance is superior to BellSouth's performance to its retail customers.

The Commission believes that BellSouth should file monthly reports with the Commission and the Public Staff on the performance it provides to the following CLPs in North Carolina: (1) BellSouth Telecommunications, Inc.; (2) BellSouth BSE, Inc.; and (3) CLPs in the aggregate, excluding data and results for BellSouth Telecommunications, Inc. and BellSouth BSE, Inc. Furthermore, the Commission concludes that the requirement to report performance results of its affiliates be limited to only the affiliate(s) which provide local services. The Commission also concludes that the record does not bare out the need to have BellSouth provide information from all of its affiliates, outside of local services provided by its CLP.

CONCLUSIONS

The Commission concludes that BellSouth should be required to file separate monthly reports with the Commission and the Public Staff on the performance it provides to: (1) BellSouth Telecommunications, Inc.; (2) BellSouth BSE, Inc.; and (3) CLPs in the aggregate, excluding data and results for BellSouth Telecommunications, Inc. and BellSouth BSE, Inc. The requirement to report performance results of its affiliates is limited to only the affiliate(s) which provide local services. The Commission declines to require BellSouth to report performance results for its other affiliates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

ISSUE: What are the appropriate retail analogs and benchmarks?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth and the CLP Coalition appear to agree on the circumstances in which either retail analogs or benchmarks should apply: if a measure requires a standard and a retail analog exists, then the retail analog should apply; if there is no retail analog, then there should be a benchmark. As to the selection of the appropriate analogs and the level of the benchmarks (i.e., 90%, 85%), the Commission should adopt BellSouth's proposal as set forth in its April 23, 2001 SQM. As witness Varner stated, the particular retail analogs and benchmarks BellSouth proposes in the SQM are the result of several years of work and have been conformed to the results reached in Georgia and Florida. BellSouth argued that the CLP Coalition has provided little in the way of substantive criticism of the BellSouth-proposed retail analogs. As to benchmarks, however, the dispute between the Parties is more clearly drawn.

CLP COALITION: BellSouth's retail analogs and benchmarks should be revised in accordance with witness Kinard Exhibits KK-A and KK-D. As was done in New York and Texas, the Commission should require BellSouth to meet the 95% or higher thresholds. The CLP Coalition stated that it is mindful that any numerical benchmark decided in this proceeding would need to be reviewed in the future and that as BellSouth improves its systems and processes, it may be that the service level BellSouth should be required to provide today is longer than the time that should be required in the future.

PUBLIC STAFF: To the extent that any benchmarks in the current Georgia SQM are more stringent than those in the current North Carolina SQM, the Commission should require that the North Carolina benchmarks match the Georgia benchmarks and that the changes in Georgia and North Carolina take place concurrently. The Commission should decline to adopt the benchmarks proposed by the CLP Coalition or its witnesses for manual and electronic loop makeup response time, firm order confirmation timeliness, reject interval, percent flow through service requests, EEL migration, and line conditioning intervals. The Commission should also decline to adopt any additional benchmarks proposed by the CLP Coalition or its witnesses.

DISCUSSION

BellSouth commented in its opening statement at the hearing that the reason for this proceeding relates to that section of TA96 which requires that BellSouth must provide wholesale service to CLPs in a nondiscriminatory manner. BellSouth further explained that what this means is that when BellSouth provides a wholesale service to a CLP which is just like or very similar to a retail service it provides to its end users, BellSouth must provide that service in substantially the same time and manner as BellSouth does for the retail service. BellSouth noted that when BellSouth provides a wholesale service to a CLP for which it does not have an analogous retail service, it must do so in a manner that gives the CLP a meaningful opportunity to compete.

BellSouth further explained in its opening statement that BellSouth compares its performance in two ways to make comparisons between its wholesale versus retail performance. BellSouth noted that if the service is a wholesale service that BellSouth is also providing to its retail customers, then BellSouth compares how its performance on the wholesale side compares with BellSouth's performance on the retail side. BellSouth commented that this comparison represents retail analogs. BellSouth further commented that if it is a wholesale service for which BellSouth does not have a retail analog to use for comparison, BellSouth has benchmarks it has developed. BellSouth maintained that there are around 600 retail analogs and benchmarks in its proposed SQM.

BellSouth argued in its Proposed Order that it chose benchmark levels that it believes are appropriate based upon the proceedings before the Commissions in the BellSouth region and which are the same as the benchmarks approved by the Georgia Commission. BellSouth noted that CLP Coalition witness Kinard testified that the benchmarks proposed by the CLP Coalition are based on those selected in New York and Texas, however, that the CLP Coalition appears to have ignored the fact that in Texas and New York, the respective commissions were considering different ILECs with different operational systems than those developed by BellSouth. BellSouth maintained that the CLP Coalition also ignored the results from Georgia and Louisiana even though those state commissions were considering precisely the same issues, the same ILEC, and the same ILEC systems as the North Carolina Utilities Commission in the instant docket. BellSouth commented that it appears to BellSouth that the CLP Coalition is basing its position on the highest benchmarks that have been ordered anywhere by any state commission, even in circumstances that may have no applicability to the systems of BellSouth. BellSouth recommended that the Commission not accept this approach.

BellSouth argued that the specific values of the benchmarks proposed by witness Kinard on behalf of the CLP Coalition are not substantively supported anywhere in her testimony. BellSouth maintained that the CLP Coalition has proposed benchmarks that range from 95% to 100% (i.e., perfection). BellSouth highlighted that the CLP Coalition has proposed no benchmarks below 95%. BellSouth stated that witness Kinard admitted on cross-examination that the CLP Coalition has no analysis or study to support the conclusion that a 95% benchmark is the minimum that CLPs require to have a meaningful opportunity to compete. Also BellSouth noted that witness Kinard admitted that the plan approved in Texas has benchmarks below 95%

unlike the CLP Coalition proposed plan in North Carolina. BellSouth maintained that it is telling that the CLPs in Texas agreed to these lower benchmarks.

BellSouth commented that witness Kinard also agreed that for the proposed benchmarks of 100%, if there is any failure by BellSouth at all there is a penalty. BellSouth also noted that witness Kinard admitted that the CLP Coalition does not have any sort of study or analysis to suggest that the CLPs will not have a meaningful opportunity to compete if BellSouth achieves anything less than perfection for these measures.

BellSouth argued that based on the record before the Commission, the Commission should conclude that the CLP Coalition has not proposed benchmarks at reasonable, achievable levels. BellSouth maintained that the CLP Coalition has proposed unreasonably high standards with the knowledge that BellSouth or any other ILEC cannot achieve perfection and would, therefore, have to pay penalties under the CLP Coalition plan, even if BellSouth's performance is near perfect. Therefore, BellSouth recommended that the Commission adopt the benchmarks contained in BellSouth's April 23, 2001 SQM.

BellSouth witness Varner stated in rebuttal testimony that BellSouth is requesting that the Commission adopt BellSouth's SQM rather than the CLP Coalition's plan and that discussing benchmarks and analogs proposed in the CLP Coalition's plan is not particularly appropriate. However, witness Varner maintained, CLP Coalition witness Kinard simply presented her analogs and benchmarks without any critical analysis to support the conclusions she has reached. Witness Varner noted that BellSouth's recommendations are the result of several years of work and have been conformed to the results reached in Georgia and Florida. Witness Varner stated that some consideration should be given to the fact that Georgia has approved these analogs and benchmarks and that if a comparison is to be made with another jurisdiction, then it is only reasonable that such a comparison should be made with jurisdictions that share the same systems and processes, such as Georgia, and not jurisdictions such as Texas that have different systems and processes in many cases.

The CLP Coalition noted in its Proposed Order that the first step in measuring performance is to determine if there is an analogous process that BellSouth uses or has available for use regarding its retail customers. The CLP Coalition defined a retail analog as a service or function that BellSouth provides for itself, its customers, or its affiliates that is analogous to a service or function that BellSouth provides to CLPs. The CLP Coalition commented that when a BellSouth retail analog exists, BellSouth's performance for itself, its customers, and its affiliates should be compared to its performance for CLPs to determine if BellSouth is meeting TA96's parity requirement. The CLP Coalition maintained that if no retail analog exists, BellSouth's performance must be gauged by a performance standard, also known as a benchmark. The CLP Coalition stated that a benchmark is a set level of performance such as provisioning a particular UNE 95% of the time within three days.

The CLP Coalition argued that choosing a retail analog that is dissimilar to the service or product being measured can make discriminatory performance look like parity.

The CLP Coalition noted that if there is no analogous process, the Commission must set a benchmark for determining performance. The CLP Coalition maintained that benchmarks should be based on the level of performance that can be expected to offer an efficient carrier a meaningful opportunity to compete. The CLP Coalition argued that benchmarks cannot be based simply on BellSouth's historical performance of its level of service to CLPs.

The CLP Coalition maintained that it takes issue with the benchmarks BellSouth has proposed in its SQM that are below the 95% thresholds that have been set in other states, such as New York and Texas. The CLP Coalition stated that often, not only the percentage of timely performance, but also the intervals themselves are set below those adopted in other states. The CLP Coalition opined that BellSouth's trunk confirmation and collocation intervals are excessively long and need to be tightened up to foster competition in North Carolina. In any event, the CLP Coalition commented, the shorter the interval for a particular measure, the lower the threshold that would be generally acceptable to the CLPs. The CLP Coalition also maintained that it agrees with the Florida Commission's determination that benchmarks set below 90-95% do not generally allow CLPs a meaningful opportunity to compete.

The CLP Coalition argued that for many of its provisioning and maintenance and repair measures, BellSouth inappropriately compares UNE loops to retail dispatch services. The CLP Coalition noted that the physical work done in a central office, which is all that is required of many UNE migration orders, should not be compared to work done in the field, including at the customer premises. The CLP Coalition argued that provisioning and repair measures should be divided into three categories:

(1) switch-based orders;
(2) central office or "dispatch in"; and
(3) field work or "dispatch out".

The CLP Coalition maintained that some practices call into question whether BellSouth is providing nondiscriminatory treatment. The CLP Coalition provided an example: In BellSouth's proposed P-4 metric, which concerns average completion interval and order completion interval distribution, the period BellSouth measures runs from when the FOC is provided to the CLP to the time of order completion. BellSouth, for its retail orders, measures the relevant period from the time an order is issued in its Service Order Control System (SOCS). BellSouth does not provide a FOC to its retail representatives and, hence, the period it measures for its retail operations is necessarily different from that measured for CLPs.

The CLP Coalition noted that in some instances, BellSouth has proposed diagnostic measures without retail analogs and benchmarks. The CLP Coalition maintained that in some of these instances, the CLPs do not disagree, but for others, the CLPs believe that the Commission should establish a benchmark. As an example, the CLP Coalition noted that BellSouth has proposed the measure O-12 Speed of Answer in the Ordering Center which measures the average time a CLP is in the queue at the LCSC. The CLP Coalition noted that because BellSouth has decided to label it diagnostic, there is no performance standard to which BellSouth is held accountable. The CLP Coalition stated that there is no reason for this metric to be diagnostic and that the Commission should adopt the CLP Coalition's proposed benchmark of 95% of all calls answered within 20 seconds and 100% of all calls answered within 30 seconds.

The CLP Coalition also maintained that with respect to benchmarks for xDSL loop delivery, BellSouth has proposed that it be given seven business days from issuance of the FOC for loops without conditioning and 14 business days from issuance of the FOC for loops with conditioning. The CLP Coalition argued that BellSouth's measurement will not capture its performance of conditioning and that BellSouth has failed to justify its proposed interval. The CLP Coalition commented that no improvement will happen until BellSouth is ordered to comply with a reasonable xDSL loop interval. The CLP Coalition argued that BellSouth's measurement will not capture its performance for conditioning at all and that for loops without conditioning, BellSouth is actually asking for two days longer to deliver a loop than it promises in its product and service guide. The CLP Coalition maintained that BellSouth's performance will improve only when the Commission orders that performance to improve and that BellSouth should be working to improve loop delivery intervals.

Covad witness Allen stated that DSL loops are plain copper, voice grade loops. Thus, he argued, the appropriate retail analog for repairs to stand alone xDSL loops is retail POTS service. Witness Allen noted that for order completion intervals, Covad prefers that BellSouth be measured on a benchmark and for other provisioning and maintenance and repair measurements, the appropriate retail analog is retail POTS.

In his revised testimony, witness Allen stated that BellSouth proposes that it be allowed as much as five minutes to make an electronic loop makeup response. Witness Allen stated that it is inconceivable why BellSouth thinks it needs this much time. Moreover, witness Allen asserted, BellSouth suggests that it should only be held to the five minute benchmark 90% of the time. Witness Allen alleged that this fails to provide CLPs with a meaningful opportunity to compete. Witness Allen argued that BellSouth should respond to electronic loop makeup information 98% of the time within one minute. Witness Allen asserted that the exact same performance measurement was recently ordered in Georgia and that the New York and Texas state commissions have previously adopted a standard similar to the one advocated by the CLP Coalition.

CLP Coalition witness Kinard stated in direct testimony that benchmarks should be based on the level of performance that can be expected to offer an efficient carrier a meaningful opportunity to compete. Witness Kinard maintained that benchmarks cannot be based simply on BellSouth's historical performance — that BellSouth has provided a certain level of service to CLPs in the past does not mean that level of service provides CLPs a meaningful opportunity to compete or to even meet North Carolina's end user standards.

Witness Kinard stated that choosing a retail analog that is dissimilar than the service or product being measured can make discriminatory performance look like parity. Witness Kinard commented that if a slow process is chosen on the retail side, it masks poor performance on the wholesale side. Witness Kinard maintained that if the performance of a BellSouth affiliate is used to judge parity, the affiliate's activity must be studied to see if it is similar to that of the CLPs' and make the appropriate analog.

Witness Kinard stated that any numerical benchmark decided in this proceeding would need to be reviewed in the future.

Witness Kinard argued that BellSouth's benchmarks are not adequate to promote competition. Witness Kinard stated that many standards are set below the 95% and higher threshold required in New York and Texas for most metrics except call center and OS/DA answer times. Witness Kinard commented that often not only the percentage of timely performance but also the intervals themselves are set below those adopted in other states.

During her summary given at the hearing, witness Kinard stated that many of BellSouth's benchmarks fall short of standards established in New York, Texas, and other states. Witness Kinard maintained that BellSouth has never provided studies as to why it should be less capable than these other ILECs. She recommended that BellSouth's benchmarks be adjusted accordingly.

During cross-examination, witness Kinard stated that every single one of the CLP Coalition's proposed benchmarks are 95% or higher and that some (very few) are at 100%. Witness Kinard agreed that she had no study or analysis to suggest that the CLPs will not have a meaningful opportunity to compete if BellSouth achieves anything less than absolute perfection for the measures with a proposed benchmark of 100%. Witness Kinard also agreed that the Georgia Commission set about half of the benchmarks below 95%.

Further during cross-examination, witness Kinard stated that while participating in New York, Pennsylvania, Ameritech region states, Arizona, and Colorado, she has never seen a study by an ILEC or CLP on the appropriate intervals to allow competition to proceed.

The CLP Coalition remarked on several specific benchmark issues that are in dispute, as follows:

(1) OP-1 - Flow-Through (Per BellSouth's April 23, 2001 SQM, Metric O-3 Percent Flow-Through Service Requests - Summary and Metric O-4 Percent Flow-Through Service Requests - Detail)

The CLP Coalition noted that flow-through measures how many CLP LSRs pass through BellSouth's OSS and have a FOC returned **without manual handling**. The CLP Coalition maintained that the ability of BellSouth's OSS to operate in a mechanical fashion will have a meaningful affect on a CLP's ability to add new customers and service existing customers. Therefore, the CLP Coalition stated, this measure impacts competition very significantly. The CLP Coalition noted that when orders do not pass through BellSouth's OSS mechanically, BellSouth service representatives must retype the CLP's LSRs so they can be accepted by BellSouth's legacy provisioning systems. As such, the CLP Coalition maintained, the CLP's LSRs are subjected to longer timeframes and greater risk of human error. The CLP Coalition argued that no other organization retypes service orders submitted by BellSouth's retail operations and that this fact alone shows that when the CLPs' LSRs must be handled manually, the CLPs do not have parity of service. The CLP Coalition stated that it believes that BellSouth does not want large volumes of orders falling out for manual handling, however, the flow-through standards must be set at a level that requires BellSouth to improve its performance.

The CLP Coalition specified that BellSouth proposed that for remedy purposes the flow-through measure be based on the eligibility of the LSR to be processed mechanically and if the LSR is not designed by BellSouth to flow through, it is excluded from the measurement. The CLP Coalition noted that BellSouth proposed the benchmarks to be 95% for resale residence, 90% for resale business, and 85% for UNE orders. The CLP Coalition stated that if the LSR is designed for mechanical processing, the flow-through rate should be much higher. Also, the CLP Coalition argued, BellSouth could not explain why it proposed different flow-through rates for UNEs than for resale. The CLP Coalition maintained that the flow-through on UNE P orders and resale orders should be the same. The CLP Coalition proposed that the Commission conclude that if the LSRs are designed for mechanical processing, the benchmark should be set at 98%.

(2) OP-6H - FOC Timeliness (Per BellSouth's April 23, 2001 SQM Measure O-9 Firm Order Confirmation Timeliness)

The CLP Coalition commented that the FOC date is the date an ILEC assigns to complete a CLP order. The CLP Coalition maintained that this response from BellSouth is very important to the CLPs, as it is the date that will be communicated to the end user for the service to be installed. The CLP Coalition asserted that the CLPs' ability to get an FOC date in a timely manner is paramount.

The CLP Coalition noted that BellSouth has proposed that only 85% of partially mechanized LSRs be returned within 18 business hours in three months, and to 10 business hours after six months. The CLP Coalition maintained that if the standard is set at the levels BellSouth proposed, then the end user will not be able to experience parity service. The CLP Coalition noted that its witness Sauder testified that Southwestern Bell is held to 95% FOC timeliness within five business hours for all partially mechanized LSRs and argued that BellSouth should be held to this same standard.

(3) OP-5H - Reject Interval (Per BellSouth's April 23, 2001 SQM Measure O-8 Reject Interval)

The CLP Coalition stated that the reject interval is the amount of time that transpires between the CLP submission of a LSR and BellSouth returning the LSR to the CLP due to errors with the LSR. The CLP Coalition noted that for February 2001, BellSouth's data shows that 22% of UNE P order and 26% of UNE orders were rejected. The CLP Coalition maintained that a quick return of rejects for correction by the CLP is critical to competition in North Carolina.

The CLP Coalition commented that BellSouth proposed a reject interval of 85% of partially mechanized rejects to be returned to the CLP within 18 business hours in three months, and 10 business hours after six months. The CLP Coalition asserted that under this proposal, BellSouth can wait approximately two days on 85% of the orders and even longer on the remaining 15% of the orders before ever indicating a mistake has been made. The CLP Coalition noted that after correcting the mistake, the CLP may have to wait another two days or more before learning if the problem has been corrected. All the while, the CLP Coalition maintained, the end user is left wondering when and if his or her service will be provisioned by the CLP.

The CLP Coalition noted that its witness Sauder testified that the Texas Commission reduced this problem by mandating Southwestern Bell to a standard of 97% of partially mechanized rejects returned within six hours. The CLP Coalition maintained that in the instant case, the CLP Coalition argued that 95% of partially mechanized rejects should be returned within five hours. The CLP Coalition asserted that its proposal is a more relaxed standard than what the ILEC is held to in Texas. Therefore, the CLP Coalition recommended that the Commission conclude that the CLP Coalition's proposal is reasonable and should be adopted.

The Public Staff noted in its Proposed Order that the CLP Coalition is proposing changes to several analogs and benchmarks in BellSouth's current North Carolina SQM. The Public Staff addressed each of the benchmarks proposed by the CLP Coalition, as follows:

(1) PO-1 - Loop Makeup Response Time - Manual

The Public Staff commented that BellSouth proposed that it return 95% of manual loop makeups to CLPs within 72 hours (3 days per BellSouth's April 23, 2001 SQM) and that the CLP Coalition supported this benchmark noting that the Georgia Commission had recently adopted the same response time benchmark for its SQM. The Public Staff recommended that since there is no difference between the positions of the CLP Coalition and BellSouth regarding this metric, the Commission should conclude that no action is necessary. The Commission notes that the Public Staff is apparently incorrect in its statement on measure PO-1. After reviewing the Exhibits filed by BellSouth and the CLP Coalition outlining their positions, it appears that BellSouth is proposing 95% within three business days while the CLP Coalition is advocating 95% within 72 hours. Witness Kinard Exhibit KK-B states, "[BellSouth's] proposed benchmark of 3 business days is more lenient than the CLP proposed 72 hour interval."

(2) PO-2 - Loop Makeup Response Time - Electronic

The Public Staff noted that Covad witness Allen contended that BellSouth should be required to respond to 98% of electronic loop makeup queries within one minute, as the Georgia Commission had recently adopted. The Public Staff commented that BellSouth questioned whether a response to electronic queries within one minute or five minutes would have any material impact on Covad or its competitiveness, noting that it sometimes took as much as 14 days just to provide the service. The Public Staff recommended that the Commission conclude that BellSouth should be capable of simultaneously offering the same level of service to its North Carolina CLP customers that it does to its Georgia CLP customers. Therefore, the Public Staff proposed that the Commission find that to the extent the benchmarks for this measure in the current Georgia SQM are more stringent than those in the current North Carolina SQM, the Commission should require that the North Carolina benchmarks match the Georgia benchmarks and that the changes in Georgia and North Carolina take place concurrently.

(3) O-9 - Firm Order Confirmation Timeliness

The Public Staff noted in its Proposed Order that the CLP Coalition contends that BellSouth's proposed benchmark for firm order confirmation timeliness for partially mechanized LSRs, 85% returned within 48 hours, would not provide parity with BellSouth's retail operations. The Public Staff commented that while BellSouth proposed lowering the 48-hour figure to 10 hours within six months, the CLP Coalition stated that BellSouth had also changed the units of measurement from total hours to business hours, thereby reducing the impact of the reduction. The Public Staff recommended that the Commission decline to adopt the CLP Coalition's proposal, however that the Commission should direct BellSouth, to the extent that it has scheduled implementation of benchmarks in Georgia more stringent than those applicable in North Carolina, to alter its North Carolina benchmarks to conform to the Georgia implementation schedule.

(4) O-8 - Reject Interval

The Public Staff commented that the CLP Coalition objected to BellSouth's proposed benchmark of 85% of partially mechanized LSR rejections returned within 10 business hours, which BellSouth would only be required to meet six months after the SQM had become effective. The CLP Coalition asked the Commission to substitute a benchmark of 95% within five business hours, similar to the benchmark the Texas Commission imposed on Southwestern Bell. The Public Staff noted that BellSouth argued that the CLP Coalition's benchmark recommendations were flawed because it had failed to consider whether the systems used by Southwestern Bell were comparable to BellSouth's systems, and had failed to show that the business rules that applied to both companies for this measurement were similar. The Public Staff recommended that the Commission decline to adopt the CLP Coalition's proposal. The Public Staff proposed that the Commission specify that it expects both BellSouth and the CLPs to work toward the goal of eliminating the terms "business days" and "business hours" from the performance metrics, and require the CLPs and BellSouth to provide updated proposals during the performance review cycle. The Public Staff recommended that the Commission direct BellSouth, to the extent that it has scheduled implementation of more stringent benchmarks in Georgia than in North Carolina, to alter its North Carolina benchmarks to adhere to the Georgia implementation schedule.

(5) O-3 and O-4 - Percent Flow-Through Service Requests (Summary/Detail)

The Public Staff noted that the CLP Coalition contended that BellSouth's failure to provide fully electronic ordering on certain types of LSRs constitutes failure to offer parity service to the CLPs. The Public Staff commented that the CLP Coalition objected to setting the UNE flow-through rate at 85% and suggested that flow-through benchmarks should be set at 98% for LSRs designed for electronic processing. The Public Staff commented that BellSouth asserted that it handles its retail orders and the CLPs' LSRs similarly and that the FCC had decided that it was acceptable to exclude results for LSRs that were not designed to flow-through the ordering process. The Public Staff recommended that the Commission conclude that there is insufficient evidence to justify changes to the flow-through benchmarks in BellSouth's current

North Carolina SQM. The Public Staff proposed that the Commission decline to implement such changes at this time.

(6) EEL Migration Benchmarks

The Public Staff noted that the CLP Coalition stated that it had modified its original proposal to request that the Commission set a standard interval for BellSouth to convert special access circuits to EELs. The Public Staff commented that the CLP Coalition proposed a benchmark of 95% of conversions completed within 10 days of receipt of an error-free conversion request. The Public Staff recommended that the Commission conclude that there is insufficient evidence to enable it to determine whether EEL-specific benchmarks should be established and, if so, what these should be. The Public Staff proposed that the Commission urge BellSouth and the CLPs to negotiate the appropriate interval lengths for EEL conversions, firm order confirmations, completion notices, and billing changes, and reflect these results in their interconnection agreements.

(7) Line Conditioning Interval Benchmarks

The Public Staff commented that CLP witness Allen described as nonsensical the idea of allowing BellSouth 14 days to condition a loop for xDSL service. The Public Staff noted that witness Allen contended that the conditioning work occurs before the order completion interval even begins, so no further time should be included in the order completion interval metric to accommodate the conditioning process. The Public Staff noted that BellSouth witness Varner disputed this position, stating that during the second quarter of 2001, BellSouth had changed its previous practice to include the line conditioning time in the order completion interval. The Public Staff recommended that the Commission disagree with witness Allen's contention that identical processes are required to provision ordinary copper voice-grade loops and xDSL loops. The Public Staff noted that witness Varner's testimony detailed some of the common problems that are unique to provisioning lines for xDSL service, and that the Commission should find that xDSL line provisioning is often more laborious and time-consuming than provisioning voice-grade loops and may warrant a longer completion interval. The Public Staff proposed that the Commission conclude that no change is required to the benchmarks in BellSouth's North Carolina SQM for metric P-4, Average Completion Interval and Order Completion Interval Distribution.

(8) Other Metrics

The Public Staff noted that CLP Coalition witness Kinard also proposed several other specific modifications to BellSouth's current North Carolina benchmarks in Exhibit KK-B to her direct testimony. The Public Staff commented that while many of the proposals may be reasonable, the Commission should defer consideration of them until the Public Staff's proposed initial six-month review. However, the Public Staff previously recommended that the Commission conclude in connection with metrics O-8, O-9, and PO-2 that BellSouth should be capable of simultaneously offering the same level of service to its CLP customers in North Carolina and Georgia. Therefore, the Public Staff proposed that to the extent that the benchmarks for any measure in the current Georgia SQM are more stringent than those for the analogous measure in the current North Carolina SQM, the Commission should require BellSouth to match the Georgia benchmarks. The Public Staff recommended that the Commission require that the changes in Georgia and North Carolina take place concurrently.

The Commission has prepared the following table to compare, measure-by-measure, the analogs and benchmarks proposed by BellSouth and the CLP Coalition in this proceeding:

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark[1]	CLP Coalition Proposed Retail Analog or Benchmark[2]
OSS-1 - Average Response Time and Response Interval (Pre-Ordering/Ordering)	Parity + 4 seconds	Retail analogs by function
OSS-2 - Interface Availability (Pre-Ordering/Ordering)	99.5%	99.5%
OSS-3 - Interface Availability (M&R)	99.5%	99.5%
OSS-4 - Response Interval (M&R)[3]	Parity	Retail analogs by function
PO-1 – Loop Makeup - Response Time - Manual	95% in 3 Business Days	95% within 72 hours
PO-2 – Loop Makeup - Response Time - Electronic	90% in 5 Minutes (Reassess after 6 months - new system)	95% within 1 minute
1O-1 - Acknowledgment Message Timeliness	EDI - 90% within 30 Minutes (6 months - 95% within 30 Minutes) TAG - 95% within 30 Minutes	98% within 15 minutes for both EDI and TAG
O-2 - Acknowledgment Message Completeness	100%	100%
O-3 - Percent Flow-Through Service Requests (Summary)	Residence Resale - 95% Business Resale - 90% UNE - 85% LNP - 85%	98%

[1] Per BellSouth's April 23, 2001 SQM.

[2] Per Kinard Exhibits KK-A, KK-B, and KK-D.

[3] It is the Commission's understanding and belief that parity and retail analog are synonymous terms and can be used interchangeably.

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
O-4 - Percent Flow-Through Service Requests (Detail)	Residence Resale - 95% Business Resale - 90% UNE - 85% LNP - 85%	98%
O-5 - Flow-Through Error Analysis	N/A	
O-6 - CLEC LSR Information	N/A	
O-7 - Percent Rejected Service Requests	Diagnostic	Diagnostic
O-8 - Reject Interval	Mechanized 97% within 1 hour Partially Mechanized 85% within 18 hours in 3 months 85% within 10 hours in 6 months Non-Mechanized 85% within 24 hours	Mechanized 95% within 1 hour Partially Mechanized 95% within 5 hours Non-Mechanized 95% within 24 hours
O-9 – Firm Order Confirmation Timeliness	Mechanized 97% within 1 hour Partially Mechanized 85% within 18 hours in 3 months 85% within 10 hours in 6 months Non-Mechanized 85% within 24 hours	Mechanized 95% within 1 hour Partially Mechanized 95% within 5 hours Non-Mechanized 95% within 24 hours

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
O-10 – Service Inquiry with LSR FOC Response Time Manual	95% returned within 5 Business Days	95% in 3 days for electronic orders 95% in 4 days for manual orders
O-11 - FOC and Reject Response Completeness	95% returned	100% returned
O-12 - Speed of Answer in Ordering Center	Diagnostic	95% in 20 seconds 100% in 30 seconds
O-13 - LNP-Percent Rejected Service Requests	Diagnostic	Diagnostic
O-14 - LNP-Reject Interval Distribution and Average Reject Interval	Mechanized 97% within 1 hour Partially Mechanized 85% within 18 hours Non-Mechanized 85% within 24 hours	Mechanized 95% within 1 hour Partially Mechanized 95% within 5 hours Non-Mechanized 95% within 24 hours

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
O-15 - LNP-Firm Order Confirmation Timeliness Interval Distribution and Firm Order Confirmation Average Interval	Mechanized 95% within 3 hours Partially Mechanized 85% within 18 hours (10 hours after 6 months) Non-Mechanized 85% within 36 hours	Mechanized 95% within 3 hours Partially Mechanized 85% within 18 hours (10 hours after 6 months) Non-Mechanized 85% within 36 hours
P-1 - Mean Held Order Interval and Distribution Intervals	Parity with Retail	Retail Analog
P-2 - Average Jeopardy Notice Interval and Percentage of Orders Given Jeopardy Notices	Parity with Retail and for Average Jeopardy Notice Interval (Electronic Only) 95% ≥ 48 hours	Retail Analog
P-3 – Percent Missed Installation Appointments	Parity with Retail	Retail Analog
P-4 - Average Completion Interval and Order Completion Interval Distribution	Parity with Retail UNE xDSL - 7 days without conditioning and 14 days with conditioning	Intervals for xDSL with and without conditioning are too long. Interval for conditioning should be no more than 5 days. (KK-B) Benchmark or analog (KK-D)

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
P-5 - Average Completion Notice Interval	Parity with Retail	Retail Analog
P-6 - Coordinated Customer Conversions Interval	95% ≤ 15 minutes	< 5 minutes per loop
P-6A - Coordinated Customer Conversions - Hot Cut Timeliness % Within Interval and Average Interval	95% within + or - 15 minutes of scheduled start time For SL1 and SL2 IDLC - 95% within 4 hour window	95% within + or - 15 minutes of scheduled start time Different intervals for IDLC are inappropriate and unjustified
P-6B - Coordinated Customer Conversions - Average Recovery Time	Diagnostic	98% in 1 hour 100% in 2 hours
P-6C - Coordinated Customer Conversions - % Provisioning Troubles Received Within 7 Days of a Completed Service Order	≤ 5%	1%
P-7 - Cooperative Acceptance Testing - % of xDSL Loops Tested	95% of lines tested	99.5%
P-8 - % Provisioning Troubles Within 30 Days of Service Order Completion	Parity with Retail	Retail Analog
P-9 - Total Service Order Cycle Time	Diagnostic	
P-10 - LNP - Percent Missed Installation Appointments	Retail Residence and Business (POTS)	Retail Analog

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
P-11 - LNP - Average Disconnect Timeliness Interval and Disconnect Timeliness Interval Distribution	95% within 15 minutes	95% < 15 minutes
P-12 – LNP – Total Service Order Cycle Time	Diagnostic	
M&R-1 - Missed Repair Appointments	Parity with Retail	Retail Analog
M&R-2 - Customer Trouble Report Rate	Parity with Retail	Retail Analog
M&R-3 - Maintenance Average Duration	Parity with Retail	Retail Analog
M&R-4 - Percent Repeat Troubles Within 30 Days	Parity with Retail	Retail Analog
M&R-5 - Out of Service > 24 hours	Parity with Retail	
M&R-6 - Average Answer Time - Repair Centers	For CLEC, Average Answer Times in UNE Center and BRMC are comparable to the Average Answer Times in the BellSouth Repair Centers	Benchmark should be the better of parity or at least the end user standard (KK-B) 95% within 20 seconds 100% within 30 seconds (KK-D)
M&R-7 - Mean Time to Notify CLEC of Network Outages	Parity by Design	KPMG confirm parity (KK-B) Parity (KK-D)

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
B-1 - Invoice Accuracy	CLEC Invoice Accuracy is comparable to BellSouth Invoice Accuracy	Retail Analog
B-2 - Mean Time to Deliver Invoices	CRIS-Based invoices will be released for delivery within 6 business days CABS-Based invoices will be released for delivery within 8 calendar days CLEC Average Delivery Intervals for both CRIS and CABS Invoices are comparable to BellSouth Average delivery for both systems	
B-3 - Usage Data Delivery Accuracy	CLEC Usage Data Delivery Accuracy is comparable to BellSouth Usage Data Delivery Accuracy	Retail Analog

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
B-4 - Usage Data Delivery Completeness	CLEC Usage Data Delivery Completeness is comparable to BellSouth Usage Data Delivery Completeness	
B-5 - Usage Data Delivery Timeliness	CLEC Usage Data Delivery Timeliness is comparable to BellSouth Usage Data Delivery Timeliness	Retail Analog
B-6 - Mean Time to Deliver Usage	Mean Time to Deliver Usage to CLEC is comparable to Mean Time to Deliver Usage to BellSouth	Retail Analog
B-7 - Recurring Charge Completeness	Resale - Parity UNE - 90% Interconnection - 90%	Retail Analog for Resale UNE 90% complete
B-8 – Non-Recurring Charge Completeness	Resale - Parity UNE - 90% Interconnection - 90%	Retail analog for Resale UNE 90% complete
OS-1 - Speed to Answer Performance/Average Speed to Answer - Toll	Parity by Design	90% answered by live agent in 10 seconds
OS-2 - Speed to Answer Performance/Percent Answered within "X" Seconds - Toll	Parity by Design	

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
DA-1 - Speed to Answer Performance/Average Speed to Answer - Directory Assistance	Parity by Design	90% within 10 seconds
DA-2 - Speed to Answer Performance/Percent Answered within "X" Seconds - Directory Assistance	Parity by Design	
D-1 – Average Database Update Interval	Parity by Design	KPMG needs to confirm parity by design
D-2 - Percent Database Update Accuracy	95% Accurate	
D-3 - Percent NXXs and LRNs Loaded by the LERG Effective Date	100% by LERG effective date	
E-1 - E911 Timeliness	Parity by Design	Parity by Design
E-2 - E911 Accuracy	Parity by Design	Parity by Design
E-3 - E911 Mean Time	Parity by Design	Parity by Design

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
TGP-1 - Trunk Group Performance - Aggregate	Any 2 hour period in 24 hours where CLEC blockage exceeds BellSouth blockage by more than 0.5% using trunk groups 1, 3, 4, 5, 10, 16 for CLECs and 9 for BellSouth	No trunks exceed blocking standards as follows: 2% local and intraLATA toll trunk groups 1% local tandem, local direct office final, intraLATA exchange, 911, DA, DA call complete 0.5% OS, intraLATA tandem meet point
TGP-2 – Trunk Group Performance - CLEC Specific	Any 2 hour period in 24 hours where CLEC blockage exceeds BellSouth blockage by more than 0.5% using trunk groups 1, 3, 4, 5, 10, 16 for CLECs and 9 for BellSouth	Same as for TGP-1
C-1 - Collocation Average Response Time	Virtual 20 calendar days Physical Caged 30 Calendar Days Physical Cageless 30 Calendar days	95% within 10 calendar days

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
C-2 - Collocation Average Arrangement Time	Virtual - Ordinary 50 Calendar Days Virtual - Extraordinary 75 Calendar Days Physical Caged - Ordinary 90 Calendar days Physical Caged - Extraordinary 130 Calendar Days Physical Cageless - Ordinary 90 Calendar Days Physical Cageless - Extraordinary 130 Calendar Days	Physical 90 calendar days Physical Augment 90/45 calendar days Virtual 60 calendar days Virtual Augment 60/90 calendar days Cageless 60 calendar days Remote 45 calendar days
C-3 - Collocation Percent of Due Dates Missed	≥ 95% on time	100% on time
CM-1 - Timeliness of Change Management Notices	95% ≥ 30 days of release	98% on time
CM-2 - Change Management Notice Average Delay Days	≤ 8 Days	95% in 5 days (KK-B) No more than 5 days (KK-D)

April 23, 2001 SQM Measure	BellSouth Proposed Retail Analog or Benchmark	CLP Coalition Proposed Retail Analog or Benchmark
CM-3 - Timeliness of Documents Associated with Change	95% ≥ 30 days if new features coding is required 95% ≥ 5 days for documentation defects, corrections, or clarifications	30 days for documentation changes
CM-4 - Change Management Documentation Average Delay Days	≤ 8 Days	98% in 5 days (KK-B) No more than 5 days (KK-D)
CM-5 - Notification of CLEC Interface Outages	97% in 15 minutes	

Note: If the CLP Column is left blank, the Commission could not identify the CLP Coalition's position in Exhibits KK-A, KK-B, or KK-D.

As the table above shows, BellSouth and the CLP Coalition apparently agree on the retail analogs and benchmarks for the following measures:

(1) OSS-2
(2) OSS-3
(3) OSS-4
(4) O-2
(5) O-7
(6) O-13
(7) P-1
(8) P-3
(9) P-5
(10) P-8
(11) P-10
(12) P-11
(13) M&R-1
(14) M&R-2
(15) M&R-3
(16) M&R-4
(17) M&R-7
(18) B-1
(19) B-3
(20) B-5
(21) B-6
(22) D-1
(23) E-1
(24) E-2
(25) E-3

BellSouth and the CLP Coalition apparently disagree on retail analogs and benchmarks for the following measures:

(1) OSS-1
(2) PO-1
(3) PO-2
(4) O-1
(5) O-3
(6) O-4
(7) O-8
(8) O-9
(9) O-10
(10) O-11
(11) O-12
(12) O-14
(13) O-15
(14) P-4
(15) P-6
(16) P-6A
(17) P-6B
(18) P-6C
(19) P-7
(20) M&R-6
(21) OS-1
(22) DA-1
(23) TGP-1
(24) TGP-2
(25) C-1
(26) C-2
(27) C-3
(28) CM-1
(29) CM-2
(30) CM-3
(31) CM-4

The Commission cannot determine if BellSouth and the CLP Coalition disagree or agree on the following measures, although the Commission is inclined to believe that the Parties agree when the CLP Coalition does not present a position on a particular measure:

(1) O-5
(2) O-6
(3) P-2
(4) P-9
(5) P-12
(6) M&R-5
(7) B-2
(8) B-4
(9) B-7
(10) B-8
(11) OS-2
(12) DA-2
(13) D-2
(14) D-3
(15) CM-5

The Commission notes that no Party admitted into evidence any study or analysis that undeniably proves at what benchmark the CLPs do not have a meaningful opportunity to compete.

Further, the Commission agrees with BellSouth that it would not be appropriate to simply apply the benchmarks established in Texas to the North Carolina SQM since the systems and processes in Texas may very well be different than those for BellSouth in North Carolina.

The Commission also notes that the Florida Public Service Commission addressed benchmarks in its September 10, 2001 *Order*, stating:

> As to benchmarks, we agree with the ALEC Coalition that benchmarks set below 90 or 95 percent do not generally allow the ALECs a meaningful opportunity to compete. We are increasing many of the benchmarks that are set below this level for both reporting and compliance purposes. [Note: See Attachments 5 and 7 of the *Florida Order*] .

The Commission will not address the measures that BellSouth and the CLP Coalition agree on or the measures that the Commission cannot determine whether BellSouth and the CLP Coalition agree on. The Commission generally notes that in reviewing and reaching conclusions on appropriate analogs and benchmarks, there is no one "right" answer. The Commission provides its discussion and conclusions based on its judgment of what is reasonable and appropriate. Neither BellSouth, the CLP Coalition, or the Public Staff have the one undisputed "right" answer, and all Parties base their recommendations on judgment. The Commission provides the following discussions and conclusions on the analogs and benchmarks that are in dispute in this proceeding.

OSS-1 - Average Response Time and Response Interval

BellSouth is proposing parity + 4 seconds. The CLP Coalition is proposing retail analog. The Commission notes that the Florida Commission adopted parity + 2 seconds for measure OSS-1. The Commission does not believe that BellSouth adequately supported its position of adding 4 seconds to parity. Therefore, the Commission finds it appropriate to adopt parity as the standard for measure OSS-1.

PO-1 - Loop Makeup - Response Time - Manual

BellSouth is proposing a response time of 95% within 3 business days while the CLP Coalition is proposing a response time of 95% within 72 hours. The Commission notes that the Florida Commission adopted a benchmark of 95% within 3 business days for measure PO-1. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level of 95% within 3 business days the CLPs would be impaired in their opportunity to compete. Therefore, the Commission adopts a benchmark of 95% within 3 business days as proposed by BellSouth for measure PO-1.

PO-2 - Loop Makeup - Response Time - Electronic

BellSouth is proposing a response time of 90% within 5 minutes and proposes reassessing the benchmark within 6 months. The CLP Coalition is proposing a response rate of 95% within 1 minute. The Commission notes that the Florida Commission adopted a benchmark of 95% within 1 minute for measure PO-2. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level of 90% within 5 minutes the CLPs would be impaired in their opportunity to compete. Therefore, the Commission adopts a benchmark of 90% within 5 minutes as proposed by BellSouth for measure PO-2.

O-1 - Acknowledgment Message Timeliness

BellSouth is proposing that a benchmark for EDI of 90% within 30 minutes and in six months, a benchmark of 95% within 30 minutes. For TAG, BellSouth is proposing a benchmark of 95% within 30 minutes. The CLP Coalition is proposing a benchmark of 98% within 15 minutes for both EDI and TAG. The Commission agrees with the CLP Coalition that there should not be separate benchmarks for EDI and TAG. However, the Commission believes that the CLP Coalition's proposed benchmark of 98% within 15 minutes is unreasonable. The Commission also notes that the Florida Commission adopted a benchmark of 95% within 30 minutes for EDI or TAG for measure O-1. The Commission adopts a benchmark of 95% within 30 minutes for both EDI and TAG for measure O-1.

O-3 - Percent Flow-Through Service Requests - Summary
O-4 - Percent Flow-Through Service Requests - Detail

BellSouth is proposing a benchmark of 95% for residence resale, 90% for business resale, 85% for UNE, and 85% for LNP. The CLP Coalition is recommending 98%, regardless of the service. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed levels that the CLPs would be impaired in their opportunity to compete. Further, the Commission notes that the Florida Commission adopted the benchmarks proposed by BellSouth (residence 95%; business 90%; UNE 85%; and LNP 85%) for measures O-3 and O-4. The Commission adopts benchmarks of 95% for residence resale, 90% for business resale, 85% for UNE, and 85% for LNP as proposed by BellSouth for measures O-3 and O-4.

O-8 - Reject Interval

BellSouth is proposing the following benchmarks:

Mechanized - 97% within 1 hour

Partially Mechanized - 85% within 18 hours in 3 months and 85% within 10 hours in 6 months
Non-Mechanized - 85% within 24 hours

The CLP Coalition is proposing the following benchmarks:

Mechanized - 95% within 1 hour
Partially Mechanized - 95% within 5 hours
Non-Mechanized - 95% within 24 hours

The Commission agrees with the CLP Coalition that a quick return of rejects for correction by the CLP is critical to competition. The Commission believes that BellSouth's proposed benchmarks for partially mechanized and nonmechanized orders are inadequate, however, the Commission believes for partially mechanized orders, the CLP Coalition's proposed 5-hour timeframe is too stringent. Therefore, the Commission adopts the following benchmarks for measure O-8:

Mechanized - 97% within 1 hour (to agree with BellSouth)
Partially Mechanized - 95% within 12 hours (half of the amount of time allowed for nonmechanized)
Non-Mechanized - 95% within 24 hours (as proposed by the CLP Coalition)

The Commission notes that the Florida Commission adopted the following benchmarks for measure O-8: Fully Mechanized - 97% in 1 hour; Partially Mechanized - 95% within 10 hours; and Non-Mechanized - 95% within 24 hours.

O-9 - Firm Order Confirmation Timeliness

BellSouth is proposing the following benchmarks:

Mechanized - 97% within 1 hour
Partially Mechanized - 85% within 18 hours in 3 months and 85% within 10 hours in 6 months
Non-Mechanized - 85% within 24 hours

The CLP Coalition is proposing the following benchmarks:

Mechanized - 95% within 1 hour
Partially Mechanized - 95% within 5 hours
Non-Mechanized - 95% within 24 hours

The Commission agrees with the CLP Coalition that it is critical for CLPs to be able to give their end users a date for service. The Commission believes that BellSouth's proposed benchmarks for partially mechanized and nonmechanized orders are inadequate, however, the Commission believes for partially mechanized orders, the CLP Coalition's proposed 5-hour timeframe is too stringent. Therefore, the Commission adopts the following benchmarks for measure O-9:

Mechanized - 97% within 1 hour (to agree with BellSouth)
Partially Mechanized - 95% within 12 hours (half of the amount of time allowed for non-mechanized)
Non-Mechanized - 95% within 24 hours (as proposed by the CLP Coalition)

The Commission notes that the Florida Commission adopted the following benchmarks for measure O-9: Fully Mechanized - 95% in 3 hours; Partially Mechanized - 95% within 10 hours; and Non-Mechanized - 95% within 24 hours.

O-10 - Service Inquiry with LSR FOC Response Time Manual

BellSouth is proposing a benchmark of 95% returned within 5 business days. The CLP Coalition is proposing a benchmark of 95% within 3 days for electronic orders and 95% within 4 days for manual orders. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level of 95% returned within 5 business days the CLPs would be impaired in their opportunity to compete. The Commission notes that the Florida Commission adopted a benchmark of 95% returned within 5 business days for measure O-10. Therefore, the Commission adopts a benchmark of 95% returned within 5 business days as proposed by BellSouth for measure O-10.

O-11 - FOC and Reject Response Completeness

BellSouth is proposing a benchmark of 95% returned while the CLP Coalition is recommending a benchmark of 100% returned. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level of 95% returned that the CLPs would be impaired in their opportunity to compete. No evidence proves that unless the benchmark is set at 100% as proposed by the CLP Coalition competition will be impaired. Further, the Commission notes that the Florida Commission adopted a benchmark of 95% returned as proposed by BellSouth for measure O-11. The Commission adopts a benchmark of 95% returned as proposed by BellSouth for measure O-11.

O-12 - Speed of Answer in Ordering Center

BellSouth is recommending a diagnostic benchmark for this measure while the CLP Coalition is proposing a benchmark of 95% answered within 20 seconds and 100% answered within 30 seconds. As BellSouth witness Varner explained, diagnostic measures identify a portion of an overall process that does not have an impact on the end user or they can simply be a different way of displaying information associated with a measurement. The Commission agrees with the CLP Coalition and questions the use of a diagnostic benchmark for this measure. Further, the Commission notes that current Commission Rule R9-8 sets a standard for business office answertime of 90% or more within 20 seconds. Therefore, Rule R9-8 requires that BellSouth answer calls from its retail customers to its business office within 20 seconds 90% of the time. The Commission believes that it is reasonable to require BellSouth to provide answer times in its ordering center for CLPs in the same time as it is required to answer calls from its own end users in its business office. Therefore, the Commission adopts a benchmark of 90% or more of calls answered within 20 seconds for measure O-12. The Commission notes that Rule R9-8 is currently under investigation in Docket No. P-100, Sub 99. Any changes to Rule R9-8 in this regard may also need to be reflected in this docket. Finally, the Commission notes that the Florida Commission adopted parity with retail for measure O-12.

O-14 - LNP - Reject Interval Distribution and Average Reject Interval

BellSouth is proposing the following benchmarks:

Mechanized - 97% within 1 hour
Partially Mechanized - 85% within 18 hours
Non-Mechanized - 85% within 24 hours

The CLP Coalition is proposing the following benchmarks:

Mechanized - 95% within 1 hour
Partially Mechanized - 95% within 5 hours
Non-Mechanized - 95% within 24 hours

The Commission believes that BellSouth's proposed benchmarks for partially mechanized and nonmechanized orders are inadequate, however, the Commission believes for partially mechanized orders, the CLP Coalition's proposed 5-hour timeframe is too stringent. Therefore, the Commission adopts the following benchmarks for measure O-14:

Mechanized - 97% within 1 hour (to agree with BellSouth)
Partially Mechanized - 95% within 12 hours (half of the amount of time allowed for nonmechanized)
Non-Mechanized - 95% within 24 hours (as proposed by the CLP Coalition)

The Commission notes that the Florida Commission adopted the following benchmarks for measure O-14: Fully Mechanized - 97% ≤ 1 hour; Partially Mechanized - 95% ≤ 10 hours; and Non-Mechanized - 95% ≤ 24 hours.

O-15 - LNP - Firm Order Confirmation Timeliness Interval Distribution and Firm Order Confirmation Average Interval

BellSouth is proposing the following benchmarks:

Mechanized - 95% within 3 hours
Partially Mechanized - 85% within 18 hours (10 hours after 6 months)
Non-Mechanized - 85% within 36 hours

The CLP Coalition is proposing the following benchmarks:

Mechanized - 95% within 1 hour
Partially Mechanized - 95% within 5 hours
Non-Mechanized - 95% within 24 hours

The Commission believes that BellSouth's proposed benchmarks for partially mechanized and nonmechanized orders are inadequate, however, the Commission believes for partially mechanized orders, the CLP Coalition's proposed 5-hour timeframe is too stringent. Further, the Commission does not believe that BellSouth provided adequate support for a 3-hour window for mechanized orders and a 36-hour window for nonmechanized orders which deviate from other benchmarks proposed for measures O-8, O-9, and O-14. Therefore, the Commission adopts the following benchmarks for measure O-15:

Mechanized - 95% within 1 hour (to agree with CLP Coalition)
Partially Mechanized - 95% within 12 hours (half of the amount of time allowed for nonmechanized)
Non-Mechanized - 95% within 24 hours (as proposed by the CLP Coalition)

The Commission notes that the Florida Commission adopted the following benchmarks for measure O-15: Fully Mechanized - 95% within 3 hours; Partially Mechanized - 95% ≤ 10 hours; and Non-Mechanized - 95% ≤ 24 hours.

P-4 - Average Completion Interval and Order Completion Interval Distribution

BellSouth is proposing a benchmark of 7 days for UNE xDSL loops without conditioning and 14 days for loops with conditioning while the CLP Coalition is proposing a benchmark of no more than 5 days for loops with or without conditioning. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level, the CLPs would be impaired in their opportunity to compete. Further, the Commission notes that the Florida Commission adopted a benchmark of 5 days for loops without conditioning and 12 days for loops with conditioning for measure P-4. The Commission adopts a benchmark of 7 days for UNE xDSL loops without conditioning and 14 days for loops with conditioning as proposed by BellSouth for measure P-4.

P-6 - Coordinated Customer Conversions Interval

BellSouth is proposing a benchmark of 95% ≤ 15 minutes while the CLP Coalition is proposing a benchmark of < 5 minutes per loop. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level of 95% ≤ 15 minutes that the CLPs would be impaired in their opportunity to compete. Further, the Commission notes that the Florida Commission adopted a benchmark of 95% ≤ 15 minutes as proposed by BellSouth for measure P-6. The Commission adopts a benchmark of 95% ≤ 15 minutes as proposed by BellSouth for measure P-6.

P-6A - Coordinated Customer Conversions - Hot Cut Timeliness % within Interval and Average Interval

BellSouth and the CLP Coalition agree on a benchmark of 95% within + or - 15 minutes of scheduled start time. However, BellSouth is proposing a benchmark for SL1 and SL2 IDLC of 95% within a four-hour window while the CLP Coalition argued that different intervals for IDLC are inappropriate and unjustified. The Commission does not believe that adequate evidence was presented that if the benchmark for SL1 and SL2 IDLC is established at BellSouth's proposed level of 95% within a four-hour window that the CLPs would be impaired in their opportunity to compete. Further, the Commission notes that the Florida Commission adopted a benchmark of 95% of SL1 and SL2 IDLC within a four-hour window for measure P-6A. The Commission adopts a benchmark of 95% within + or - 15 minutes of scheduled start time as proposed by BellSouth and the CLP Coalition and a benchmark of 95% for SL1 and SL2 IDLC within a four-hour window as proposed by BellSouth for measure P-6A.

P-6B - Coordinated Customer Conversions - Average Recovery Time

BellSouth is proposing a diagnostic benchmark for this measure while the CLP Coalition is proposing a benchmark of 98% within 1 hour and 100% within 2 hours. The Commission does not believe the CLP Coalition provided an explanation of why a diagnostic benchmark is inappropriate for this measure. Further, the Commission notes that the Florida Commission adopted a diagnostic benchmark for measure P-6B. Therefore, the Commission adopts a diagnostic benchmark as proposed by BellSouth for measure P-6B.

P-6C - Coordinated Customer Conversions - % Provisioning Troubles Received within 7 Days of a Completed Service Order

BellSouth is proposing a benchmark of ≤ 5% while the CLP Coalition is proposing a benchmark of 1%. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level of ≤ 5% that the CLPs would be impaired in their opportunity to compete. Further, the Commission notes that the Florida Commission adopted a benchmark of ≤ 5% as proposed by BellSouth for measure P-6C. The Commission adopts a benchmark of ≤ 5% as proposed by BellSouth for measure P-6C.

P-7 - Cooperative Acceptance Testing - % of xDSL Loops Tested

BellSouth is proposing a benchmark of 95% of lines tested while the CLP Coalition is proposing a benchmark of 99.5%. The Commission notes that this issue is discussed under the Evidence and Conclusions for Finding of Fact No. 23 - New CLP-Proposed Measures (Measure OP-119) wherein the Commission adopted a benchmark of 95% of lines tested successfully pass cooperative testing. The Commission adopts a benchmark of 95% of lines tested successfully pass cooperative testing for measure P-7.

M&R-6 - Average Answer Time - Repair Centers

BellSouth is proposing for this measure that for CLPs, the average answer times in the UNE center and BRMC are comparable to the average answer times in the BellSouth repair centers. The CLP Coalition is proposing a benchmark of 95% within 20 seconds and 100% within 30 seconds. The Commission notes that current Commission Rule R9-8 sets a standard for repair service answertime of 90% or more within 20 seconds. Therefore, Rule R9-8 requires that BellSouth answer calls from its retail customers to its repair office within 20 seconds 90% of the time. The Commission believes that it is reasonable to require BellSouth to provide answer times in its repair center for CLPs in the same time as it is required to answer calls from its own end users in its repair office. Therefore, the Commission adopts a benchmark of 90% or more of calls answered within 20 seconds for measure M&R-6. The Commission notes that Rule R9-8 is currently under investigation in Docket No. P-100, Sub 99. Any changes to Rule R9-8 in this regard may also need to be reflected in this docket. Finally, the Commission notes that the Florida Commission adopted parity with retail for measure M&R-6.

OS-1 - Speed to Answer Performance/Average Speed to Answer - Toll

BellSouth proposed parity by design for this measure and the CLP Coalition proposed a benchmark of 90% answered by a live agent in 10 seconds. The Commission notes that current Commission Rule R9-8 sets a standard for operator "O" answertime of 90% or more within 10 seconds. Therefore, Rule R9-8 requires that BellSouth answer calls from its retail customers to its operator services within 10 seconds 90% of the time. The Commission believes that it is reasonable to require BellSouth to provide answer times for its operator services for CLPs in the same time as it is required to answer calls from its own end users. Therefore, the Commission adopts a benchmark of 90% or more of calls answered within 10 seconds for measure OS-1. The Commission notes that Rule R9-8 is currently under investigation in Docket No. P-100, Sub 99. Any changes to Rule R9-8 in this regard may also need to be reflected in this docket. Finally, the Commission notes that the Florida Commission adopted parity by design for measure OS-1.

DA-1 - Speed to Answer Performance/Average Speed to Answer - Directory Assistance

BellSouth proposed parity by design for this measure, and the CLP Coalition proposed a benchmark of 90% of calls answered within 10 seconds. The Commission notes that current Commission Rule R9-8 sets a standard for directory assistance answertime of 85% or more within 10 seconds. Therefore, Rule R9-8 requires that BellSouth answer calls from its retail customers to its directory assistance within 10 seconds 85% of the time. The Commission believes that it is reasonable to require BellSouth to provide answer times for its directory assistance for CLPs in the same time as it is required to answer calls from its own end users. Therefore, the Commission adopts a benchmark of 85% or more of calls answered within 10 seconds for measure DA-1. The Commission notes that Rule R9-8 is currently under investigation in Docket No. P-100, Sub 99. Any changes to Rule R9-8 in this regard may also need to be reflected in this docket. Finally, the Commission notes that the Florida Commission adopted parity by design for measure DA-1.

TGP-1 - Trunk Group Performance - Aggregate
TGP-2 - Trunk Group Performance - CLEC Specific

BellSouth is recommending the following benchmark for this measure: any 2 hour period in 24 hours where CLEC blockage exceeds BellSouth blockage by more than 0.5% using trunk groups 1, 3, 4, 5, 10, 16 for CLECs and 9 for BellSouth. The CLP Coalition is proposing the following benchmark for this measure: no trunks exceed blocking standards as follows: 2% local and intraLATA toll trunk groups; 1% local tandem, local direct office final, intraLATA exchange, 911, DA, DA call complete; and 0.5% OS, intraLATA tandem meet point. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level the CLPs would be impaired in their opportunity to compete. Further, the Commission notes that the Florida Commission adopted the benchmark proposed by BellSouth (Any 2 hour period in 24 hours where CLEC blockage exceeds BellSouth blockage by more than 0.5% using trunk groups 1, 3, 4, 5, 10, 16 for CLECs and 9 for BellSouth) for measures TGP-1 and TGP-2. The Commission adopts the benchmark proposed by BellSouth for measures TGP-1 and TGP-2.

C-1 - Collocation Average Response Time

BellSouth is proposing the following benchmarks for this measure: Virtual - 20 calendar days; Physical Caged - 30 calendar days; and Physical Cageless - 30 calendar days. The CLP Coalition recommends a benchmark of 95% within 10 calendar days. The Commission notes that the Florida Commission adopted the following benchmarks for measure C-1: Virtual – 15 calendar days; Physical Caged - 15 calendar days; and Physical Cageless - 15 calendar days. The Commission further notes that since the filing of Proposed Orders in this docket, the Commission has issued its December 28, 2001 *Order Addressing Collocation Issues* in Docket No. P-100, Sub 133j. The Commission further notes that in the *Order*, the Commission adopted the following intervals for application response:

1 to 5 applications - 15 calendar days
6 to 10 applications - 20 calendar days
11 to 15 applications - 25 calendar days
16 to 20 applications - 30 calendar days
21 to 25 applications - 35 calendar days
etc...

Motions for Reconsideration of the Commission's December 28, 2001 *Collocation Order* have been filed, and the Commission has solicited comments and reply comments on those Motions. The Commission adopts the intervals specified in the December 28, 2001 *Collocation Order* for measure C-1 as noted above and may alter these intervals, if necessary, to reflect the final adopted intervals in Docket No. P-100, Sub 133j.

C-2 - Collocation Average Arrangement Time

BellSouth is proposing the following benchmarks for measure C-2:

Virtual - Ordinary
50 Calendar Days

Virtual - Extraordinary
75 Calendar Days

Physical Caged - Ordinary
90 Calendar days

Physical Caged - Extraordinary
130 Calendar Days

Physical Cageless - Ordinary
90 Calendar Days

Physical Cageless - Extraordinary
130 Calendar Days

The CLP Coalition recommends the following benchmarks:

Physical
90 calendar days

Physical Augment
90/45 calendar days

Virtual
60 calendar days

Virtual Augment
60/90 calendar days

Cageless
60 calendar days

Remote
45 calendar days

The Commission notes that the Florida Commission adopted the following benchmarks for measure C-2:

Virtual - Ordinary
60 Calendar Days

Virtual - Augment
45/60 Calendar Days

Physical Caged - Ordinary
90 Calendar days

Physical Caged - Augment
45/90 Calendar Days

Physical Cageless
90 Calendar Days

Physical Cageless - Augment
45/90 Calendar Days

The Commission further notes that since the filing of Proposed Orders in this docket, the Commission has issued its December 28, 2001 *Order Addressing Collocation Issues* in Docket No. P-100, Sub 133j. The Commission notes that it adopted a provisioning interval of 60 calendar days from the application date for physical cageless collocation space and 90 calendar days from the application date for physical caged collocation space. Motions for Reconsideration of these specific intervals in the Commission's December 28, 2001 *Collocation Order* have been filed, and the Commission has solicited comments and reply comments on those Motions. The Commission adopts the intervals specified in the December 28, 2001 *Collocation Order* for measure C-2 as noted above and may alter these intervals, if necessary, to reflect the final adopted intervals in Docket No. P-100, Sub 133j.

C-3 - Collocation Percent of Due Dates Missed

BellSouth proposes a benchmark of ≥95% on time while the CLP Coalition proposes a benchmark of 100% on time. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level the CLPs would be impaired in their opportunity to compete. Further, the Commission notes that the Florida Commission adopted a benchmark of ≥95% on time. The Commission adopts a benchmark of ≥95% on time as proposed by BellSouth for measure C-3.

CM-1 - Timeliness of Change Management Notices

BellSouth proposes a benchmark of 95% ≥ 30 days of release while the CLP Coalition proposes a benchmark of 98% "on time". The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level the CLPs would be impaired in their opportunity to compete. The Commission does note that the Florida Commission adopted a benchmark of 98% on time for measure CM-1. The Commission adopts a benchmark of 95% ≥ 30 days of release as proposed by BellSouth for measure CM-1.

CM-2 - Change Management Notice Average Delay Days

BellSouth proposes a benchmark of ≤ 8 days while the CLP Coalition proposes a benchmark of 95% within 5 days. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level the CLPs would be impaired in their opportunity to compete. The Commission does note that the Florida Commission adopted a benchmark of ≤ 5 days for measure CM-2. The Commission adopts a benchmark of ≤ 8 days as proposed by BellSouth for measure CM-2.

CM-3 - Timeliness of Documents Associated with Change

BellSouth proposes a benchmark of 95% ≥ 30 days if new features coding is required and 95% ≥ 5 days for documentation defects, corrections, or clarifications. The CLP Coalition proposes a benchmark of 30 days for documentation changes. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level the CLPs would be impaired in their opportunity to compete. The Commission does note that the Florida Commission adopted a benchmark of 98% on time for measure CM-3. The Commission adopts benchmarks of 95% ≥ 30 days if new features coding is required and 95% ≥ 5 days for documentation defects, corrections, or clarifications as proposed by BellSouth for measure CM-3.

CM-4 - Change Management Documentation Average Delay Days

BellSouth proposes a benchmark of ≤ 8 days while the CLP Coalition proposes a benchmark of 98% within 5 days. The Commission does not believe that adequate evidence was presented that if the benchmark is established at BellSouth's proposed level the CLPs would be impaired in their opportunity to compete. The Commission does note that the Florida Commission adopted a benchmark of 95% ≤ 5 days for measure CM-4. The Commission adopts a benchmark of ≤ 8 days as proposed by BellSouth for measure CM-4.

CONCLUSIONS

The Commission adopts the following retail analogs and benchmarks:

Measure from BellSouth's April 23, 2001 SQM	Commission Approved Analog or Benchmark
OSS-1	Parity
PO-1	95% within 3 business days
PO-2	90% within 5 minutes
O-1	95% within 30 minutes for both EDI and TAG

Measure from BellSouth's April 23, 2001 SQM	Commission Approved Analog or Benchmark
O-3 O-4	95% residence resale 90% business resale 85% UNE 85% LNP
O-8	Mechanized - 97% within 1 hour Partially Mechanized - 95% within 12 hours Non-Mechanized - 95% within 24 hours
O-9	Mechanized - 97% within 1 hour Partially Mechanized - 95% within 12 hours Non-Mechanized - 95% within 24 hours
O-10	95% returned within 5 business days
O-11	95% returned
O-12	90% or more of calls answered within 20 seconds
O-14	Mechanized - 97% within 1 hour Partially Mechanized - 95% within 12 hours Non-Mechanized - 95% within 24 hours
O-15	Mechanized - 95% within 1 hour Partially Mechanized - 95% within 12 hours Non-Mechanized - 95% within 24 hours
P-4	7 days for loops without conditioning and 14 days for loops with conditioning
P-6	95% ≤ 15 minutes
P-6A	95% within + or - 15 minutes of scheduled start time For SL1 and SL2 IDLC - 95% within 4 hour window
P-6B	Diagnostic
P-6C	≤ 5%

Measure from BellSouth's April 23, 2001 SQM	Commission Approved Analog or Benchmark
P-7	95% of lines tested successfully pass cooperative testing
M&R-6	90% or more of calls answered within 20 seconds
OS-1	90% or more of calls answered within 10 seconds
DA-1	85% or more of calls answered within 10 seconds
TGP-1 and TGP-2	Any 2 hour period in 24 hours where CLP blockage exceeds BellSouth blockage by more than 0.5% using trunk groups 1, 3, 4, 5, 10, 16 for CLPs and 9 for BellSouth
C-1	1-5 applications - 15 calendar days 6-10 applications - 20 calendar days 11-15 applications - 25 calendar days 16-20 applications - 30 calendar days 21-25 applications - 35 calendar days etc...
C-2	Physical cageless - 60 calendar days from application date Physical caged - 90 calendar days from application date
C-3	≥ 95% on time
CM-1	95% ≥ 30 days of release
CM-2	≤ 8 days
CM-3	95% ≥ 30 days if new features coding is required 95% ≥ 5 days for documentation defects, corrections, or clarifications
CM-4	≤ 8 days

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

ISSUE - New CLP-Proposed Measures: Should any of the new CLP-proposed measures be adopted and, if so, which ones?

POSITIONS OF PARTIES

BELLSOUTH: The CLPs' proposed measurements, which are additional to the ones contained in BellSouth's April 23, 2001 SQM Plan, are inappropriate. The appropriate service quality measures to be reported by BellSouth are those contained in BellSouth's April 23, 2001 SQM Plan, which is attached to the testimony of BellSouth witness Varner, as Exhibit AJV-1. These are basically the same service quality measurements as ordered by the Georgia Public Service Commission.

CLP COALITION: The CLP Coalition believes that BellSouth should be required to implement additional measures and to modify its existing measures, as proposed by the CLP Coalition in its witnesses' testimony. According to its Proposed Order, the CLP Coalition recommended that BellSouth should be required to report the metrics BellSouth includes in its SQM, plus the following CLP-proposed additional metrics: OP-104, OP-105, OP-108 [this is referenced as OP-120 in the Task Force Final Report and as OP-8 in WorldCom witness Kinard's direct testimony], and BL-105, and also stated that the following metrics should be amended or clarified: OP-109, OP-119, CM-101, CM-102, CM-103, CM-104, CM-105, and MI-101.

PUBLIC STAFF: The Public Staff recommended that the Service Order Accuracy metric contained in BellSouth's Georgia SQM should be incorporated into BellSouth's current North Carolina SQM Plan. The Public Staff recommended that the Percent Completions/Attempts without Notice or with Less Than 24 Hours Notice metric should be incorporated into BellSouth's current North Carolina SQM Plan. The Public Staff recommended that the Commission should not adopt the CLP-proposed metrics OP-114, OP-115, and OP-116 regarding trunk engineering and augmentation. The Public Staff recommended that the Commission should not adopt proposed metrics BL-104 and BL-105; CM-101, CM-102, CM-103, CM-104, and CM-105; MI-101 and MI-102; MR-101; OP-8, OP-106, OP-107, OP-108, OP-109, OP-111, OP-112, OP-113, and OP-119; OSS-102, OSS-103, and OSS-104; and any additional metrics proposed by the CLP Coalition or its witnesses. The Public Staff also recommended that BellSouth should be required to revise the business rules and calculation sections for the two metrics: O-12 and M&R-6.

DISCUSSION

On January 16, 2001, the Georgia Public Service Commission issued a final Order in its performance measurement docket, *In re: Performance Measures for Telecommunications Interconnection, Unbundling and Resale*, Order, Docket No. 7892-U. That Order added

17 metrics to BellSouth's then-filed plan.[1] BellSouth's February 21, 2001 and April 23, 2001 revised SQM Plans included all of these additional metrics, except for Percent Completions/Attempts w/o Notice or < 24 hours notice; Bona Fide Requests (BFRs) processed in 30 business days; and BFR Quotes provided in X days.

On September 10, 2001, the Florida Public Service Commission also issued an *Order* wherein it approved service quality measures to be reported by BellSouth, *In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies*, Order, Docket No. 000121-TP. All 71 metrics proposed by BellSouth were adopted as part of the Florida SQM Plan. In addition, the following four metrics proposed by the CLPs (termed "ALECs" (Alternative Local Exchange Carrier) in Florida) were added to the Florida SQM: Percent Order Accuracy; Percent Completion/Attempts without a Notice or with less than 24 Hours Notice; Percent Completion of Timely Loop Modification; and Percent Billing Errors Corrected in x Days, as set forth on Page 23 of that *Order*. The Florida Commission, at Page 14 of its *Order*, also clarified the metric titled "Percent Successful xDSL Service Testing". The Florida Commission, at Page 15 of its *Order*, also called for further consideration of the metric titled "Percent of Orders Canceled or Supplemented at the Request of the ILEC", during the Commission's six-month review. According to the CLP Coalition, in the Florida proceeding, the CLPs had requested 23 metrics in addition to those proposed by BellSouth and most of those additional metrics proposed by the CLPs have been raised as issues in this current North Carolina proceeding.

In North Carolina, BellSouth proposed 71 service quality measures in its Revised SQM Plan, Version 0.02, dated April 23, 2001. The performance measurements are categorized by BellSouth under the following major measurement topics: Operations Support Systems (OSS), Ordering, Provisioning, Maintenance and Repair, Billing, Operator Services and Directory Assistance (OS/DA), Database Update Information, E911, Trunk Group Performance, Collocation, and Change Management.

[1] These additional 17 metrics are as follows: Response Time for Manual Loop Make-Up (LMU) Queries; Response Time for Electronic LMU Queries: Acknowledgement Timeliness; Acknowledgement Completeness; FOC/Reject Response Completeness; % Completions/Attempts w/o Notice or < 24 hours notice; Average Recovery Time for Coordinated Cuts; Cooperative Acceptance Testing Attempts vs. Requested by CLPs; Recurring Charge Completeness; Nonrecurring Charge Completeness; Mean Time to Notify CLPs of Network Outages; Mean Time to Notify CLPs of Interface Outages; Average Database Update Interval; Percent Database Update Accuracy; NXX (prefix portion of telephone number) and Location Routing Numbers (LRNs) loaded and tested by Local Exchange Routing Guide (LERG) date; Bona Fide Requests (BFRs) processed in 30 business days; and BFR Quotes provided in X days.

It also should be noted that in the Georgia proceeding, BellSouth had reported that it was then in the process of developing the following five measurements: Service Inquiry with Firm Order (Manual); Loop Makeup Inquiry (Manual and Electronic); Timeliness of Change Management Notices; Percentage Functional Acknowledgements Returned on Time; and Percentage Troubles within 7 Days of Hot Cut.

As stated above, in its Proposed Order, the CLP Coalition recommended that BellSouth should be required to report the metrics it includes in its SQM Plan, plus the following CLP-proposed additional metrics: OP-104, OP-105, OP-120, and BL-105, and also that the following metrics should be amended or clarified: OP-109, OP-119, CM-101, CM-102, CM-103, CM-104, CM-105, and MI-101. However, the CLPs also contended that additional metrics could be considered during the six-month Commission review process. Additionally, in its Proposed Order, the Public Staff recommended that BellSouth should be required to revise the business rules and calculation sections for two of BellSouth's proposed answer-time related metrics, O-12 and M&R-6.

Accordingly, this discussion will focus upon these additional CLP-proposed metrics and additional CLP-proposed metric amendments/clarifications as follows:

Additional CLP Proposed Metrics:

OP-104	Percent Order Accuracy
OP-105	Percent Completions/Attempts without Notice or with Less Than 24 Hours Notice
OP-120	Percent Completion of Timely Loop Modification/Conditioning on xDSL loops
BL-105	Percent Billing Errors Corrected in X Days

Additional CLP Proposed Metric Amendments/Clarifications:

OP-109	Percent of Hot Cuts Not Working as Initially Provisioned
OP-119	Percent Successful xDSL Service Testing
CM-101	Percent Change Management Notices Sent On Time
CM-102	Percent Change Management Final Documentation Sent on Time
CM-103	Average Delay Days for Notices
CM-104	Average Delay Days for Documentation
CM-105	Percent ILEC vs. CLP Changes Made
MI-101	Percent Response Commitments Met On Time

Additionally, this discussion will also address the Public Staff's recommendation for modifications to BellSouth's business rules and calculation sections for BellSouth's two metrics: O-12 - Speed of Answer in Ordering Center and M&R-6 - Average Answer Time - Repair Centers.

Additional CLP Proposed Metrics

(1) OP-104 Percent Order Accuracy

Under the CLPs' proposal, this is a measure pertaining to ordering and provisioning. The CLP Coalition stated that when BellSouth provides the comparable measure for its own operations, it is possible to know if provisioning work performed for CLPs is at least as accurate as that performed by the ILEC for its own retail local service operations. Under BellSouth's SQM Plan, BellSouth currently has committed to report Percent Provisioning Troubles within 30 days of Service Order Completion, (Measure No. P-8). The CLPs asserted that they need to ensure that BellSouth provisions an order the way it was entered or faxed by the CLPs.

WorldCom witness Kinard testified that a Percent Order Accuracy metric would capture whether orders are changed through BellSouth's manual handling of partially mechanized or faxed orders and thereby provisioned inaccurately. MPower witness Bingham cited problems that her company had experienced due to BellSouth's errors in manual correction of orders which have caused a delay in the provision of service to customers, damaged its business reputation, and hampered its ability to compete with BellSouth.

Birch Telecom witness Sauder described problems that his company had encountered with BellSouth's handling of partially mechanized local service requests. Witness Sauder explained that these requests are submitted electronically by the CLP, but BellSouth service representatives must then manually retype them before they are converted into service orders. Consequently, witness Sauder stated that if the BellSouth representatives make errors, then service problems such as loss of dial tone, loss of features, or incorrect presubscribed interexchange carrier (PIC) changes, may occur. Further, witness Sauder stated that such troubles are normally reported to BellSouth's repair center, which would refer the CLP back to the Local Carrier Service Center (LCSC) if the trouble appeared to be related to service order activity. In such a case, witness Sauder commented that the repair center would either fail to open a trouble ticket or it would classify the ticket as "informational". The current North Carolina SQM Plan, he asserted, would not capture such troubles. Accordingly, the CLP Coalition asserted that a service provider that is unreliable in fulfilling service orders will not only generate ill-will with customers when errors are made, but will also incur higher costs to rework orders and to process customer complaints.

In further support for the addition of this metric, the CLP Coalition noted that in the Florida *Performance Measurements Order* at Pages 13 and 14, the Florida Commission stated:

> ALEC witness Kinard states that this measure is needed in Florida "to ensure that BellSouth provisions an order the way it was entered or faxed by the ALEC." BellSouth witness Coon purports that BellSouth's existing measurements of Percent Provisioning Troubles within 30 days of Service Order Activity and Invoice Accuracy are reflective of the accuracy of BellSouth order completions. We agree with the ALECs that this metric may provide useful information regarding the accuracy of orders.

In its Proposed Order, BellSouth stated that this proposed metric is designed to determine whether BellSouth has improperly changed "a CLP order as a result of its manual handling of the order." BellSouth contended that it already has in place measurements of Percent Provisioning Troubles within 30 days of Service Order Activity and Invoice Accuracy, both of which reflect BellSouth's completion of orders. In light of this, BellSouth stated that the FCC has specifically held in CC Docket No. 98-72, Paragraph 68[1], that there is no need to add the particular type of measure the CLPs advocate. Thus, BellSouth asserted that the Commission should not require the CLPs' proposal in this regard.

In its Proposed Order, the Public Staff noted that the Georgia Commission has already required BellSouth to incorporate an order accuracy metric into the Georgia performance plan,

[1] FCC Notice of Proposed Rulemaking, CC Docket No. 98-56, RM-9101, adopted April 16, 1998.

Metric No. P-11 - Service Order Accuracy, in the April 6, 2001 version of the Georgia SQM Plan (Version 1.01). The Public Staff also remarked that the Georgia Commission adopted this new metric for its SQM Plan in addition to the two metrics referenced by witness Varner, Percent Provisioning Troubles within 30 Days of Service Order Activity and Invoice Accuracy. Additionally, the Public Staff stated that the Florida Commission has also recently approved an order accuracy metric for the Florida SQM.[1]

Further, the Public Staff pointed out that a comparison of the calculation sections of the Service Order Accuracy, Percent Provisioning Troubles within 30 Days of Service Order Activity, and Invoice Accuracy metrics in the Georgia SQM Plan reveals that each metric measures distinctly different aspects of the ordering and provisioning process. In particular, the Public Staff stated that the Percent Provisioning Troubles metric measures the percentage of provisioning troubles reported within 30 days of service order completion, and the Invoice Accuracy metric measures the percentage of accurately billed invoices rendered to CLPs. Whereas, as stated by the Public Staff, the Service Order Accuracy metric measures the percentage of service orders completed without errors.

Consequently, the Public Staff stated that since BellSouth has already added the Service Order Accuracy metric to its Georgia SQM Plan, the Public Staff believes that incorporating this metric into the North Carolina SQM Plan will pose little additional burden on BellSouth and will provide information that cannot be obtained from other metrics. Therefore, the Public Staff recommended that the Commission require BellSouth to incorporate this metric into its current North Carolina SQM Plan, along with all of the same requirements that apply to the metric in the Georgia SQM Plan, including the Georgia-mandated business rules, exclusions, calculation procedures, disaggregation levels, and benchmark.

COMMISSION CONCLUSIONS - OP-104 Percent Order Accuracy

The Commission understands that the Percent Order Accuracy metric would measure the percentage of orders that BellSouth fails to complete accurately due to its manual intervention. The Commission notes that manual handling of orders has been an issue in several arbitrations before the Commission, as well as in the generic UNE cost docket, *In the Matter of General Proceeding to Determine Permanent Pricing for Unbundled Network Elements,* Docket No. P-100, Sub 133d. The Commission agrees with the CLPs that a Percent Order Accuracy metric would provide useful information regarding the accuracy of orders and it would help to ensure that BellSouth provisions an order the way it was entered or faxed by the CLP.

On March 20, 2002, BellSouth made a filing in this docket stating that during performance workshops conducted by the Georgia Commission, the CLP Coalition proposed and BellSouth did not object to, including Measure No. P-13, Service Order Accuracy, as a measure under BellSouth's SEEM. Further, in this filing, BellSouth advised the Commission that it is now agreeing voluntarily to include the Service Order Accuracy, Measure No. P-13, in its

[1] Florida Public Service Commission, Docket No. 000121-TP, August 2, 2001 memorandum from the Divisions of Regulatory Oversight, Competitive Services, and Legal Services to the Director, Division of Commission Clerk and Administrative Services, Pg. 20. Available online at http://www.psc.state.fl.us/.

permanent SQM Plan and in its SEEM plan, where it would be subject to Tier 2 penalty payments under six additional submetrics: Service Order Accuracy – Resale Residence, Resale Business, Resale Design (Specials), UNE Specials (Design), UNE (Non-Design), and Local Interconnection Trunks. In said filing, BellSouth provided the definition that "the service order accuracy measurement measures the accuracy and completeness of a sample of BellSouth service orders by comparing what was ordered and what was completed." Based upon the foregoing, the Commission believes that BellSouth's proposed addition of the Service Order Accuracy metric into its current North Carolina SQM Plan and its SEEM Plan, along with all of the same requirements that apply to the metric in the Georgia and Florida SQMs, including the mandated business rules, exclusions, calculation procedures, disaggregation levels, and benchmarks, except to the extent that any of those provisions would be inapplicable to BellSouth's North Carolina operations, would be appropriate.

(2) OP-105 Percent Completion/Attempts Without A Notice or With Less Than 24 Hours Notice

Under the CLPs' proposal this is a measure pertaining to ordering and provisioning. In its Proposed Order, the CLP Coalition stated that this proposed metric relates to the situation where the CLP did not receive a confirmation on a due date, or received it only 24 hours in advance. The CLPs asserted that missed or late confirmations from BellSouth force CLPs to scramble at the last minute to try to meet the looming due date, if it can be met at all. In particular, the CLPs stated that customers and CLPs may be unable to schedule necessary vendors to complete the installation, resulting in customer frustration with the CLP. Such absent or late notices, according to the CLPs, can lead to "customer not-ready" situations where late service delivery is wrongly blamed on the CLP and is excluded from the interval metrics. Consequently, the CLP Coalition argued that the absence of this metric can have adverse effects on the ability of CLPs to compete.

The CLP Coalition stated that it proposed this measure so that customer not-ready situations due to late or no notice from BellSouth can be highlighted, and BellSouth's performance can be monitored and corrected. According to the CLPs, the Georgia Commission, in its January 16, 2001 *Order*, added this metric to BellSouth's SQMs. Further, the CLPs commented that BellSouth did not include this metric in its revised February and April 2001 SQMs, although it had been ordered by the Georgia Commission.

BellSouth witness Varner testified that BellSouth already captures what needs to be captured in this regard, for example there is the coordinated customer conversion measure for hot cuts and the missed installation appointment measure for non-hot cut type matters. Further, witness Varner also contended that the CLPs' proposed metric would, in some cases, penalize BellSouth, for example, when the CLP requests expedited installation within 36 hours and BellSouth then takes 48 hours in which to return the notice of firm order confirmation (FOC) to the CLP. In such a situation, according to BellSouth, the FOC may be returned in the allowed time and the order may be worked on the date requested by the CLP; however, because less than 24 hours would separate the FOC and the time the order was worked, a penalty would be imposed. Accordingly, BellSouth believes that the CLPs' proposed measure is unnecessary because the same information can somehow be obtained by combining several of BellSouth's provisioning measurements.

In its Proposed Order, the CLP Coalition argued that BellSouth's measures, however, do not capture the complete picture from the CLP's perspective. The CLPs asserted that using these measures is an insufficient substitute, because none of them covers the situation where a CLP fails to receive a FOC. Even in those instances where a FOC is received, the CLPs contended that a review of the data suggested by BellSouth does not reveal whether a FOC was delivered 24 hours before the due date. Indeed, the CLPs pointed out that witness Varner admitted that when BellSouth sends a FOC less than 24 hours before the cutover, and the cutover takes place as scheduled, the cutover is considered "successful" from the standpoint of the existing BellSouth metric.

Further, in support of its position, the CLP Coalition also noted that the Florida Commission in its *Performance Measurements Order*, issued September 10, 2001, approved the metric, Percent Completion/Attempts Without a Notice or With Less Than 24 Hours Notice, as proposed by the CLPs, and noted that an exclusion for expedited orders can be included in the applicable business rules to alleviate BellSouth's concerns.

In its Proposed Order, BellSouth stated that this measurement "would address situations where BellSouth works a CLP order without giving what the CLP considers to be appropriate notice." However, BellSouth noted that "BellSouth currently has five separate provisioning measurements (Provisioning P1 – P5) that deal with order completion intervals, held orders and completion notices." This measurement, according to witness Varner, captures no additional information about the level of service BellSouth provides to the CLP. Accordingly, BellSouth concluded that this additional measurement should not be required.

In its Proposed Order, the Public Staff commented that this metric measures the percentage of order completion notice dispatches where BellSouth either did not issue the FOC or gave the CLP less than 24 hours notice of the issuance. Due to the significant problems that BellSouth could create for CLPs by failing to provide timely firm order completion notices, and because the issuance of such notices is almost always within the control of BellSouth, the Public Staff concluded that this additional metric is appropriate and should be adopted. Additionally, the Public Staff remarked that BellSouth does not assert that this type of performance problem is already detected through another metric. Further, the Public Staff noted that BellSouth has already added this metric to Version 1.01 of the Georgia Performance Metrics. Accordingly, the Public Staff recommended that the Commission require BellSouth to incorporate this metric into its current North Carolina SQM Plan, along with the same requirements applicable to the metric in the Georgia SQM Plan, including the Georgia-mandated business rules, exclusions, calculation procedures, disaggregation levels, and benchmark.

COMMISSION CONCLUSIONS - OP-105 Percent Completion/Attempts Without A Notice or With Less Than 24 Hours Notice

The Commission understands that the lack of adequate prior notice of order completions gives customers the perception that a CLP is disorganized since it must scramble to meet the deadline, or it can lead to customer not-ready situations where late service delivery is wrongly blamed on the CLP. The Percent Completion/Attempts Without a Notice or With Less Than 24 Hours Notice metric would measure the percentage of order completion notice dispatches where BellSouth either did not issue the FOC or gave the CLP less than 24 hours notice of the issuance. The Commission believes that the CLPs need adequate notice of order completion activities in order to schedule necessary vendors to complete the installation. Consequently, due to the significant problems that BellSouth could create for CLPs by failing to provide timely firm order completion notices, and because the issuance of such notices is almost always within the control of BellSouth, the Commission agrees with the Public Staff and the CLPs that this additional metric is appropriate. Additionally, the Commission also notes, as stated above, that both the Georgia Commission and the Florida Commission have already required this metric to be included in BellSouth's SQM Plan. Based upon the foregoing, the Commission believes that the inclusion of the Percent Completion/Attempts Without a Notice or With Less Than 24 Hours Notice metric into BellSouth's current North Carolina SQM Plan, along with all of the same requirements that apply to the metric in the Georgia and Florida SQMs, including the mandated business rules, exclusions, calculation procedures, disaggregation levels, and analogs/benchmarks, except to the extent that any of those provisions would be inapplicable to BellSouth's North Carolina operations, would be appropriate.

(3) OP-120 Percent Completion of Timely Loop Modification/Conditioning on xDSL Loops

Under the CLPs' proposal this is a measure pertaining to ordering and provisioning. The CLP Coalition explained that some loops require modification or conditioning before they can be used to provide a customer with xDSL (Digital Subscriber Line) service. In particular, the CLPs stated that ILECs, including BellSouth, regularly perform maintenance and provisioning on their outside plant facilities, including placing and removing certain devices from those loops, such as load coils and excessive bridged taps. Further, the CLPs commented that DSL service will not work in most instances on a loop that contains excessive bridged taps, filters, load coils, range extenders, or repeaters; thus, DSL providers must have these loops conditioned before they will support DSL service. The CLP Coalition proposed that a separate metric measure BellSouth's performance for conditioning, because none of the existing SQM metrics capture the appropriate information. The CLP Coalition stated that its proposed metric would measure BellSouth's timeliness in making needed modifications or performing the necessary conditioning.

Covad witness Allen asserted that BellSouth should be measured on how often it timely completes the provisioning of these conditioning activities, because without a set benchmark for performance and without measures, the CLPs cannot assure its customers of how long it will take to deliver these loops. Further, witness Allen testified that without any such assurance, customer dissatisfaction grows and the CLP's ability to compete is severely restrained. Because conditioning loops is a critical function for DSL providers, witness Allen stated that the CLPs believe that a separate measurement is the best way to ensure that BellSouth is performing this work in a timely fashion. WorldCom witness Kinard also argued that this metric was needed to measure BellSouth's timeliness in making the needed modifications or performing the necessary conditioning.

In its Proposed Order, the CLP Coalition noted that BellSouth argued in opposition to the CLPs' proposal stating that BellSouth has already added DSL-level disaggregation to its existing and new measures. The CLPs commented that, according to BellSouth, the process for handling orders with loop conditioning is being modified so that this measurement is addressed by other metrics, Order Completion Interval (Measure No. P-4) and Percent Missed Installation Appointments (Measure No. P-3). The CLPs asserted that the Order Completion Interval measures the time from the issuance of a FOC with a delivery date to the time when the order is closed, indicating that the loop has been provisioned. In contrast, the CLPs explained that loop modification/conditioning is performed during the service inquiry processes, *before* the FOC is delivered to the CLP. Consequently, the CLPs contended that the Order Completion Interval does not measure the process BellSouth actually has in place for loop conditioning.

The CLP Coalition concluded that the evidence clearly demonstrates that BellSouth's Order Completion Interval (Measure No. P-4) metric would not capture performance on how timely BellSouth actually conditions loops. The CLPs also commented that in the months since the Task Force Final Report was filed (July 25, 2000), BellSouth has done nothing to change its processes or to revise its metrics to adequately capture performance on loop conditioning. Additionally, the CLP Coalition stated that as noted by the Florida Commission, in its September 10, 2001 *Performance Measurements Order*, BellSouth could not give a firm date as to when the process would be modified.

Thus, the Florida Commission concluded that a Percent Completion of Timely Loop Modification metric should be included in the Florida SQM Plan and stated that:

> We agree that BellSouth has adequate disaggregation in the Order Completion Interval metric to address the ALEC concerns. However, the Missed Installation Appointments Interval does not contain this same level of disaggregation for orders with and without conditioning. We find this disaggregation useful. As an alternative to the disaggregation for loop conditioning for Percent Missed Installation Appointments, BellSouth shall establish a separate measurement for loop conditioning.

In this regard, the Florida Commission approved a benchmark of 95% ≤ five business days for this measure and also noted that disaggregation was not applicable to this measure. Accordingly, the CLP Coalition proposed a separate measurement for loop conditioning and a benchmark of five days in which that conditioning should be performed.

In its Proposed Order, BellSouth stated that this measure addresses activity already measured by BellSouth's provisioning measures, the Order Completion Interval and the Percent Missed Installation Appointments. Thus, BellSouth contended that this proposed new metric is unnecessary.

In its Proposed Order, the Public Staff noted that BellSouth witness Varner stated on cross-examination that BellSouth had changed its business rules to incorporate loop conditioning times in the order completion intervals for the average completion interval metric and that the introduction of another interval to measure loop conditioning time was unwarranted. Consequently, the Public Staff stated that the incorporation of the loop conditioning interval in the order completion intervals for Measure No. P-4 appears to accommodate the concerns of the CLP Coalition. Thus, the Public Staff concluded that further consideration of the CLPs' proposed Measure No. OP-120 is unnecessary. Further, the Public Staff remarked that the revised SQM Plan submitted by BellSouth pursuant to a final order in this docket should reflect the change in the business rules for the Average Completion Interval (OCI) & Order Completion Interval Distribution metric (Measure No. P-4).

COMMISSION CONCLUSIONS - OP-120 Percent Completion of Timely Loop Modification/Conditioning on xDSL Loops

The Commission agrees that measuring BellSouth's timeliness in making needed modifications or performing the necessary conditioning on loops to allow the CLPs to provide customers with xDSL service is an important measure to capture. As stated above, the CLPs asserted that the Order Completion Interval would not capture performance on how BellSouth actually conditions loops. The CLPs also pointed out that the Florida Commission, in its *Performance Measurements Order*, stated that BellSouth could not give a firm date as to when the process would be modified, and thus, required that a Percent Completion of Timely Loop Modification metric be included in the Florida SQM Plan.

In the North Carolina hearings, in response to a question on cross-examination concerning the matter that the process that BellSouth uses to condition loops does not allow that time to be captured in Measure No. P-4, Order Completion Interval, witness Varner answered that BellSouth was "implementing the change this week". Additionally, witness Varner testified that "by getting the completion interval, you are capturing the conditioning time so you don't need a separate measurement for that." These statements were made by witness Varner on June 12, 2001. In Florida, the hearings relating to the September 10, 2001 *Performance Measurements Order* issued by the Florida Commission were conducted April 25-27, 2001. Consequently, the Commission realizes that the majority of the Florida record was developed prior to the implementation of the changes which witness Varner has testified to as being implemented in mid June 2001. Based upon the foregoing, the Commission agrees with BellSouth and the Public Staff that the incorporation of the loop conditioning interval in the order completion intervals for Measure No. P-4 appears to accommodate the concerns of the CLP Coalition. Accordingly, the Commission considers the CLPs' proposed metric OP-120 to be unnecessary and concludes that the revised SQM Plan to be submitted by BellSouth pursuant to a final order in this docket should reflect the change in the business rules for the Average Completion Interval (OCI) & Order Completion Interval Distribution metric (Measure No. P-4). These business rules address the development of the elapsed time and accumulated time for each order, and other pertinent completion interval factors.

(4) BL- 105 Percent Billing Errors Corrected in X Days

Under the CLPs' proposal this is a measure pertaining to billing. In its Proposed Order, the CLP Coalition stated that this metric would assess whether errors in BellSouth's daily usage file (DUF) and carrier bills are corrected within a reasonable time. The CLP Coalition asserted that BellSouth's delays in providing adjustments to carrier bills or correcting DUF errors can harm the CLP and its customer such that errors that do not get corrected promptly in the DUF either lead to the CLP's delay in billing or to its passing on erroneous or incomplete charges to the customer. The CLPs contended that BellSouth's existing Invoice Accuracy metric (Measure No. B-1) does not cover this situation, because it does not capture whether errors are corrected within a reasonable time. Thus, the CLPs argued there is no way to ensure that when CLPs ask for an adjustment because of errors in the bill that it is done in a timely manner. The CLP Coalition commented that its proposed metric complements BellSouth's proposed billing accuracy measure to make sure the adjustments are done properly. Additionally, in further support of its position, the CLP Coalition noted that the Florida Commission, in its September 10, 2001 *Performance Measurements Order*, concluded that a Percent Billing Errors Corrected in X Days metric should be included in the Florida SQM. Specifically, the Florida Commission stated that:

> [the CLPs'] proposed metric would capture how quickly BellSouth corrects errors. While there are existing measures to capture billing timeliness and billing accuracy, none of the measures capture how quickly errors are fixed. We agree that this metric should be added.

In this regard, the Florida Commission approved this measure as a diagnostic standard subject to disaggregation by Carrier Bill and DUF.

In its Proposed Order, BellSouth stated that BellSouth's proposed measurement, Invoice Accuracy (Measure No. B-1) provides adequate information to assess the performance of BellSouth's billing processes. BellSouth witness Varner maintained that BellSouth addresses the CLPs' argument with the Invoice Accuracy metric. Additionally, witness Varner stated that BellSouth's Billing Verification Group conducts monthly audits that evaluate samples of bills for accuracy, completeness, etc. Thus, BellSouth contended that this proposed new metric is unnecessary.

In its Proposed Order, the Public Staff commented that the evidence fails to show that the problems experienced by the CLPs in this area are sufficient to justify creating a new billing error correction metric for the North Carolina SQM Plan. The Public Staff remarked that while it did not necessarily share witness Varner's view that the errors impacting the CLPs are being fully captured by the Invoice Accuracy metric, it did not recommend the adoption of a percent billing errors metric at this time. However, the Public Staff concluded that the CLPs should be encouraged to keep detailed records of the billing accuracy problems they experience with BellSouth, to file complaints whenever appropriate, and to bring all of their concerns and recommendations to the attention of the Commission during the initial metrics review process.

COMMISSION CONCLUSIONS - BL-105 Percent Billing Errors Corrected in X Days

The Commission understands that the CLP proposed metric would assess whether errors in BellSouth's daily usage file and carrier bills are corrected within a reasonable time. As observed by the Florida Commission, BellSouth's existing measures do not capture how quickly such errors are fixed. Consequently, the Florida Commission concluded that the metric should be added to the Florida SQM Plan. Based upon the foregoing, the Commission concludes that the inclusion of a Percent Billing Errors Corrected in X Days metric in BellSouth's current North Carolina SQM Plan, along with all of the same requirements that apply to the metric in the Florida SQM, including the mandated business rules, exclusions, calculation procedures, disaggregation levels, and analogs/benchmarks/diagnostics, except to the extent that any of those provisions would be inapplicable to BellSouth's North Carolina operations, would be appropriate.

Additional CLP Proposed Metric Amendments/Clarifications

(1) **OP-109 Percent of Hot Cuts Not Working as Initially Provisioned**

Under the CLPs' proposal this is a measure pertaining to ordering and provisioning. The CLP Coalition stated that this metric captures the situation where loops are provisioned on time, but are not working. WorldCom witness Kinard testified that often CLPs cannot log a trouble report until the order is completed in the ILEC's billing system, which may take many hours or days. Consequently, witness Kinard stated that these provisioning troubles are undetectable by BellSouth's current performance measures.

The CLP Coalition noted that BellSouth's response is that it is adding a new hot cut measurement, Percent Troubles within Seven Days of a Completed Service Order. Additionally, the CLPs commented that BellSouth also stated that a CLP can report a trouble as soon as the service order is completed; thus, the CLPs do not have to wait until the order is completed in the ILEC billing system. The CLP Coalition concluded that this clarification should be implemented in the definitions and rules for the new hot cut metric.

The CLP Coalition further remarked that this metric addresses issues similar to Measure No. OP-119, Percent Successful xDSL Service Testing, and proposed that coordinated cuts be a disaggregation of that metric for reporting purposes. The CLPs explained that as with xDSL loops, BellSouth must test the loop and the loop must pass in order to be considered as passing this metric. The CLPs believe that this metric is more proactive and customer-concerned than waiting to capture the problem in a maintenance metric after installation. The CLPs asserted that such a delay in addressing poor installations is harmful to a CLP's reputation, as well as to the customer.

In its Proposed Order, BellSouth stated that it has added to its SQM Plan a new hot cut measurement, Percent Provisioning Troubles Within Seven days of a Completed Service Order (Measure No. P-6C), that addresses this issue. BellSouth witness Varner testified that a CLP can report a trouble as soon as the service order is completed. Further, witness Varner explained that services that do not work should be identified and resolved during the cutover process before the order is completed in the system. If an order is not so identified, BellSouth stated, then the new measurement BellSouth proposes should do so. Accordingly, BellSouth maintained that this CLP-proposed measurement is simply duplicative.

In its Proposed Order, the Public Staff noted that BellSouth witness Varner responded that any services discovered not to be working during the cutover process would normally be corrected during cutover, before the order is completed in the system. Further, the Public Staff pointed out that witness Varner testified that the CLPs' proposed metric duplicates Measure No. P-6C in the current North Carolina SQM Plan.

The Public Staff noted that the CLP Coalition made no effort to refute witness Varner's arguments that the proposed metric duplicates Measure No. P-6C. Accordingly, the Public Staff concluded that Measure No. P-6C in the current North Carolina SQM Plan is adequate and that the adoption of OP-109, as proposed by the CLP Coalition is unnecessary. However, the Public Staff asserted that BellSouth should take appropriate care during each hot cut process to ensure that service to new CLP customers is working properly before the order is logged as completed.

COMMISSION CONCLUSIONS - OP-109 Percent of Hot Cuts Not Working as Initially Provisioned

BellSouth has proposed Measure No. P-6C, Percent Provisioning Troubles Within Seven Days of a Completed Service Order, which is defined as follows:

> Percent Provisioning Troubles received within 7 days of a completed service order associated with a Coordinated and Non-Coordinated Customer Conversion. Measures the quality and accuracy of Hot Cut Conversion Activities.

The Commission understands that the CLP Coalition is now requesting a clarification to the definitions and rules of BellSouth's new hot cut metric, to let the CLPs know that they can report a trouble as soon as the service order is completed, such that they do not have to wait until the order is completed in the ILEC's billing system. As stated above, according to witness Varner, a CLP can report a trouble as soon as the service order is completed. Consequently, the Commission sees no harm in including such a statement as an addition to BellSouth's definition and finds no evidence to the contrary.

Based upon the foregoing, the Commission believes that BellSouth's definition for Measure No. P-6C should be clarified by including the statement that "CLPs can report a trouble as soon as the service order is completed." Additionally, the Commission agrees with the Public Staff that BellSouth should take appropriate care during each hot cut process to ensure that service to new CLP customers is working properly before the order is logged as completed. CLPs should advise the Commission during the upcoming Commission review process if this is not the case.

(2) OP- 119 Percent Successful xDSL Service Testing

Under the CLPs' proposal this is a measure pertaining to ordering and provisioning. In its Proposed Order, the CLP Coalition stated that BellSouth should measure the percent of successful xDSL cooperative testing. Similar to the existing BellSouth metric for coordinated cuts, witness Kinard testified that this metric would determine how often an xDSL loop that is not working is delivered to the CLP. The CLPs stated that Joint Acceptance Testing generally decreases costs for both the ILEC and for the CLP, because problems are identified during the provisioning phase, rather than arising as troubles in the repair and maintenance phase. Furthermore, the CLPs maintained that Joint Acceptance Testing is important to competitors as a customer service issue. According to the CLPs, customers who are forced to take days off from work to wait for their DSL loops to be delivered are generally unhappy when the loops delivered are not working. Covad witness Allen testified that this has been a serious issue in maintaining customer satisfaction for CLPs in North Carolina.

In its Proposed Order, the CLP Coalition stated that the delivery of xDSL loops is comprised of two separate and equal components: whether the loop was delivered on time and whether it was working when delivered. The CLPs maintained that they need to have cooperative testing done on xDSL loops to determine if BellSouth has done all the appropriate work to provide connectivity. To test these two components of xDSL loop delivery, the CLP Coalition proposed a measurement of whether BellSouth participates in joint testing and whether BellSouth's loops pass that joint acceptance testing on time. Participation in testing is important, but the real question in the CLPs' view, is how many of the loops pass the joint tests conducted between a CLP and BellSouth. The CLPs contended that the proposed CLP measure makes it clear that BellSouth must both test the loop and pass the test to receive a successful report on that metric.

The CLPs noted that BellSouth has a measure, Cooperative Acceptance Testing-Percent of xDSL Loops Tested (Measure No. P-7), and BellSouth takes the position that it intends for Measure No. P-7 to test whether the loop passed cooperative testing. This metric, however, measures only successful tests, rather than measuring all tests conducted as explained by witness Varner on cross-examination. Thus, the CLPs argued that BellSouth has omitted a measure of whether the cooperative tests conducted show the loop to be working properly. Like coordinated hot cuts, the CLPs asserted that this should also be part of the end-time measurement for Average Completion Interval (Measure No. P-4) and Missed Installation Appointment (Measure No. P-3) metrics for xDSL loops, but noted that it is not in BellSouth's proposal. Witness Kinard testified that in New York, Verizon measures for both CLPs that use and do not use an acceptance process as part of its Missed Appointment metrics for xDSL service.

Furthermore, the CLPs commented that in the SEEM Disaggregation - Analog/Benchmark section, BellSouth proposes that it pay Tier 2 penalties if it fails to meet the benchmark of 95% of Lines Tested. Thus, the CLPs remarked that BellSouth will test the lines, but makes no commitment to pass the tests or to record the installation as a failure.

The Florida Commission, in its September 10, 2001 *Performance Measurements Order*, at Page 14, required two changes to BellSouth's Measure No. P-7, as follows:

> (1) In the Definition Portion, the following sentence shall be added "A loop will be considered successfully cooperatively tested when both the ALEC and ILEC representatives agree that the loop has passed the cooperative testing"; and (2) In the SEEM Analog/ Benchmark, the phrase "95 percent of Lines Tested" shall be replaced with "95 percent of Lines Tested Successfully Pass Cooperative Testing."

The CLP Coalition contended that these adjustments to BellSouth's Measure No. P-7, Cooperative Acceptance Testing-Percent of xDSL Loops Tested, are necessary to capture the appropriate data in this measure in North Carolina.

In its Proposed Order, BellSouth stated that this measure addresses activity already measured by BellSouth's provisioning measures, the Order Completion Interval and the Percent Missed Installation Appointments. BellSouth witness Varner testified that the CLPs' proposed metric OP-119 benchmark would require 99.5% of the installed xDSL loops to work properly on the first test attempt, subject to CLP verification. Witness Varner stated that in cases where BellSouth encountered problems during a xDSL installation, it would ordinarily continue testing and take necessary corrective action to ensure proper installation of the service. Witness Varner also maintained that measurements such as the order completion interval and percent missed installation appointments metrics already adequately address the CLPs' xDSL provisioning issues. Accordingly, BellSouth contended that this proposed new metric is unnecessary.

In its Proposed Order, the Public Staff remarked that BellSouth's current North Carolina SQM Plan already includes a metric that measures the percentage of CLP cooperative testing requests that BellSouth actually fulfills, Measure No. P-7, Cooperative Acceptance Testing - Percent of xDSL Loops Tested. The Public Staff asserted that the CLPs had not presented evidence that it would be reasonable to expect loops tested for xDSL service to be 99.5% xDSL-capable. In the absence of such evidence, the Public Staff opposed the adoption of metric OP-119. The Public Staff also agreed with witness Varner that the issue of whether an xDSL service installation is completed correctly and on time is at least partially addressed by the order completion interval metric. The Public Staff explained that if a CLP makes BellSouth aware of problems at the time the parties are cooperatively testing a potential xDSL loop, it expects BellSouth to act expeditiously to resolve the problems and complete the order. Further, the Public Staff stated that if the CLPs experience service installations falling below this standard, they should advise the Commission of this problem during the upcoming review period and provide their recommendations for remedial action at that time.

COMMISSION CONCLUSIONS - OP- 119 Percent Successful xDSL Service Testing

BellSouth has proposed Measure No. P-7, Cooperative Acceptance Testing - Percent of xDSL Loops Tested, which is defined as follows:

> The loop will be considered cooperatively tested when the BellSouth technician places a call to the CLEC representative to initiate cooperative testing and jointly performs the tests with the CLEC.

The SEEM Analog/Benchmark Section of Measure No. P-7, includes the phrase "95% of Lines Tested".

The Commission understands that the CLP Coalition is now requesting a clarification to the definitions and SEEM benchmark of BellSouth's Measure No. P-7, Cooperative Acceptance Testing - Percent of xDSL Loops Tested, which would explain that a loop would be considered as successfully cooperatively tested when both the CLP and ILEC representatives agree that the loop has passed the cooperative testing. The CLP Coalition is now requesting that the Commission modify BellSouth's Measure No. P-7, consistent with the modifications required by the Florida Commission. As stated above, the Florida Commission required two changes to BellSouth's Measure No. P-7, as follows:

> (1) In the Definition Portion, the following sentence shall be added "A loop will be considered successfully cooperatively tested when both the ALEC and ILEC representatives agree that the loop has passed the cooperative testing"; and (2) In the SEEM Analog/ Benchmark, the phrase "95 percent of Lines Tested" shall be replaced with "95 percent of Lines Tested Successfully Pass Cooperative Testing."

The Commission finds nothing in the evidence that would dispute the acceptance of these modifications, by the Florida Commission, as being reasonable and appropriate.

Based upon the foregoing, the Commission believes that BellSouth's definition should be clarified by including the statement that "A loop will be considered successfully cooperatively tested when both the CLP and ILEC representatives agree that the loop has passed the cooperative testing". Additionally, the Commission believes that the Phrase, "95% of Lines Tested" in the SEEM Analog/Benchmark Section of Measure No. P-7, should be modified to read "95% of Lines Tested Successfully Pass Cooperative Testing". The Commission also would remind BellSouth that when cooperatively testing a potential xDSL loop, BellSouth should act expeditiously to resolve the problems reported to it and complete the order.

(3) CM-101 Percent Change Management Notices Sent On Time
CM-102 Percent Change Management Final Documentation Sent on Time
CM-103 Average Delay Days for Notices
CM-104 Average Delay Days for Documentation
CM-105 Percent ILEC vs. CLP Changes Made

In the Task Force Final Report, these five measures were collectively defined together in the Change Management Measures Section as follows:

> Measures whether CLECs receive required notices and documentation on time to prepare for ILEC interface/system changes so CLEC interfaces are not impaired

by change. Last metric examines whether the ILEC is discriminating in ignoring CLEC requested changes to interfaces (i.e., adding new queries and status notices, etc.).

In its Proposed Order, the CLP Coalition stated that BellSouth has included metrics covering the timeliness of Change Management Notices and Documentation in the OSS test SQMs. As provided in Exhibits KK-A and KK-B of witness Kinard's direct testimony, the CLPs stated that there are many deficiencies with the business rules in the February 2001 revised SQM Plan. Further, the CLP Coalition asserted that reporting under these metrics on BellSouth's website appears to be different from what the business rules appear to require. In addition, the CLPs noted that there are additional change control metrics that need to be added to ensure that CLP interfaces are not in jeopardy of being shut down without prompt relief. The CLPs commented that often ILEC failures to adhere to change management notice requirements have caused delays in the building, or have stopped the functioning, of CLP OSS interfaces. Thus, the CLPs maintained that BellSouth must measure its adherence to its change management notice commitments and definitions of emergency notices. According to the CLPs, this is necessary to avoid BellSouth's OSS software changes from harming competitors. The CLP Coalition pointed out that New York has added an additional metric to monitor timely availability of full and accurate documentation related to change notices and that Texas has recently agreed to two change management measures, one for notices and documentation timeliness, and one for software problem resolution timeliness.

The CLPs explained that they need timely notices of changes to plan and determine what changes are required on their side of the interface. At best, the CLPs stated that late notices require CLPs to pull information technology personnel from other projects to keep the existing interface from going down. At worst, the CLPs stated that they cannot act quickly enough to stop the changes from harming their production. Consequently, the CLPs opined that having a change management process is not enough; reported data and enforcement of the process are needed to ensure the process is effective and being followed.

Further, the CLPs commented that final documentation, in addition to the change management notice, must be sent on time so CLPs can begin working on the changes to be ready from their end. Without the documentation to support the changes, the CLPs asserted that they cannot begin the necessary work.

Most significantly, according to the CLPs, BellSouth has not yet included a metric in its SQM that tracks whether it responds fairly to CLP requests for changes and new functionalities on its interfaces. While CLPs prioritize the change requests, the CLPs pointed out that BellSouth implements these changes whenever it chooses, and it ignores the CLPs' prioritization. The CLP Coalition stated that the CLPs have noted problems in getting their change requests included on BellSouth's implementation schedule for software changes. In fact, the CLPs asserted that recent exceptions in the Florida OSS Testing confirm that the process appears to be biased against CLPs. While CLPs are able to prioritize their change requests, it is the CLPs' opinion that the process does not mean that such requests will make it into an upcoming release as quickly as BellSouth's priority changes. Further, the CLPs maintained that the CLPs do not even know what BellSouth's priority changes are to compare with the CLPs' own change requests. In its Proposed Order, the CLP Coalition stated that the CLPs will be proposing a new version of this metric in the Georgia six-month review of metrics. The CLPs asserted that the Commission should agree with the CLPs that a change control implementation fairness metric is required. However, the CLP Coalition recommended that the Commission not order these metrics at this time, but find that it will consider any such metric(s) adopted in Georgia prior to this Commission's six-month review. The CLPs suggested that they should be allowed to file any such adopted Georgia metric 20 days after adoption, and that BellSouth should then be given an opportunity to comment, and that the CLPs should be given an opportunity to file a reply to such comments.

In its Proposed Order, BellSouth stated that four change management process measurements: CM-101- Percent Change Management Notices Sent on Time, CM-102 - Percent Change Management Final Documentation Sent on Time, CM-103 - Average Delay Days for Notices, and CM-104 - Average Delay Days for Documentation, suggested by CLP Coalition witness Kinard are included in Exhibit AJV-1 (the April 23, 2001 SQM Plan), attached to witness Varner's direct testimony. Specifically, BellSouth included the following measures: CM-1 - Timeliness of Change Management Notices, CM-2 - Change Management Notice Average Delay Days, CM-3 - Timeliness of Documents Associated with Change, and CM-4 - Change Management Documentation Average Delay Days.

In its Proposed Order, BellSouth stated that CLP proposed metric, CM-105 - Percent ILEC vs. CLP Changes Made, is another good example of an issue that cannot be appropriately dealt with by the use of performance measurements. BellSouth contended that this measurement would compare the percentage of BellSouth's proposed changes made in the change management process, as opposed to those proposed by the CLPs. Apparently, according to BellSouth, the assumptions underlying this proposal are that all BellSouth changes are favorable to BellSouth, all CLP changes are favorable to the CLPs, and all are of equal validity. BellSouth asserted that the Commission should not accept that the first and third assumptions are necessarily accurate. BellSouth maintained that the change control process is a collaborative process by which BellSouth and the CLPs work together to resolve issues related to change requests. Further, BellSouth noted that all changes made through this process are intended to serve the CLP community. Thus, BellSouth opined that it makes no sense to treat each change by BellSouth as creating a reason for each CLP to make a change of its own, even if the CLP-requested change is unreasonable or not technically feasible.

In summary, BellSouth concluded that the CLPs' proposed additional measures, in this regard, are either covered already by a BellSouth measurement, will not provide any useful information, or are simply inappropriate to include in a performance measurements plan. Consequently, BellSouth concluded that the measurements that should be adopted by the Commission are those proposed by BellSouth.

In its Proposed Order, the Public Staff stated that the first four of these CLP proposed metrics — CM-101 Percent Change Management Notices Sent On Time, CM-102 Percent Change Management Final Documentation Sent on Time, CM-103 Average Delay Days for Notices, and CM-104 Average Delay Days for Documentation — have already been incorporated into the current BellSouth North Carolina SQM as metrics CM-1, CM-3, CM-2, and CM-4, respectively.

The Public Staff pointed out that the remaining CLP proposed Change Management Metric CM-105, Percent ILEC vs. CLP Changes Made, was renumbered in CLP Coalition witness Kinard's direct testimony as CM-6 in the CLP Coalition's Statement of Position on Disaggregation, filed June 25, 2001. The Public Staff noted that CLP Coalition witness Kinard asserted that BellSouth ignores the CLPs' prioritization of change requests and argued that this new metric was needed to track the relative percentages of CLP- and BellSouth-proposed changes. Witness Kinard also contended that this metric would allow the Commission to determine whether BellSouth responds fairly to change requests.

Whereas, the Public Staff noted that according to BellSouth witness Varner, metric CM-105 (CM-6) fails to take into consideration the relative merits or shortcomings of proposals submitted to the change control process. Witness Varner suggested that CLPs could submit "technically infeasible" proposals deliberately in order to cause BellSouth to fail this performance requirement. Thus, witness Varner suggested that the CLPs and BellSouth should work together to prioritize the changes they submit.

The Public Staff agreed with BellSouth witness Varner that the proposed metric, CM-105, Percent ILEC vs. CLP Changes Made, would ignore the relative merits of proposals brought before the Change Control Process (CCP) and merely focus on the relative numbers of such proposals approved by the CCP. According to the Public Staff, if this metric were adopted, BellSouth would be under pressure to artificially inflate the priority assigned to the CLPs' change proposals. The Public Staff asserted that this would be neither a sensible, nor an appropriate way to manage what should be a collaborative process where proposed changes are evaluated solely on the basis of their merits and significance. Thus, the Public Staff opposed the adoption of this metric in light of its obvious shortcomings.

COMMISSION CONCLUSIONS -CM-101 Percent Change Management Notices Sent On Time
CM-102 Percent Change Management Final Documentation Sent on Time
CM-103 Average Delay Days for Notices
CM-104 Average Delay Days for Documentation
CM-105 Percent ILEC vs. CLP Changes Made

The Commission understands that the CLP Coalition is now recommending that the Commission should not require BellSouth to include the CLPs' proposed change management metrics at this time since BellSouth has already incorporated Measure Nos. CM-101, CM-102, CM-103, and CM-104 into its current BellSouth North Carolina SQM. Further, the CLPs have stated that they plan to propose a new version of the CLPs' change control implementation fairness metric (CM-105) in the Georgia six-month review of performance measurements. The CLPs are requesting that the Commission find that it will consider any such metric(s) adopted in Georgia prior to the Commission's future review under the following process. The CLPs suggested that they should be allowed to file, in North Carolina, any such adopted Georgia metric 20 days after adoption, and that BellSouth should then be given an opportunity to comment, and that the CLPs should be given an opportunity to file a reply to such comments. The Commission considers this request to be reasonable. Based upon the foregoing, the Commission concludes that no further modification to BellSouth's change control measures are necessary in this regard. However, to the extent that such a change control implementation fairness metric is later adopted in Georgia, the CLPs should be allowed to file such a metric, in North Carolina, for further consideration by the Commission.

(4) MI-101 Percent Response Commitments Met On Time

Under the CLPs' proposal this is categorized as a miscellaneous measure. In its Proposed Order, the CLP Coalition remarked that even more important than how quickly BellSouth representatives answer the phone is how quickly they answer questions or resolve problems. The CLPs asserted that they should not have to wait days for BellSouth to respond to a problem that has stalled the production of orders for the CLP. The CLPs contended that the addition of this metric, Percent Response Commitments Met On Time, would help address, for example, MPower's issues with the slow response of BellSouth's help desks. Help Desk responsiveness on missing notifier (confirmation, rejection, completion) problems is also crucial to CLPs, according to the CLPs. The CLP Coalition pointed out that Verizon's problems in this area led to the introduction of a three-day standard for resolving such requests in the New York metrics.

Witness Kinard asserted that the Commission should adopt a measurement and standard for responsiveness to all help desk questions that impede a CLP's ability to place orders or respond to customer status questions about their order. The CLP Coalition recommended that if a new improved version of this metric results from the Georgia review, the Commission should then consider it in the same manner previously proposed for any new change control metrics.

BellSouth witness Varner testified that this measurement, Percent Response Commitments Met On Time, is an apparent attempt to determine "the time between when a question is posed to a BellSouth 'help desk' and when the answer is received by the CLP." BellSouth asserted that this measure would be all but impossible to implement because of difficulties in determining specifically when a question is asked, the nature of the question, and a reasonable time frame to answer the question. BellSouth considered this to be a good example of an issue that cannot appropriately be addressed through performance measurements. Consequently, BellSouth concluded that resolving this issue through individual negotiation is more appropriate.

In its Proposed Order, the Public Staff noted that BellSouth witness Varner testified that each CLP is assigned an account manager who can respond to its questions. Thus, the Public Staff maintained that CLPs should, therefore, not have to contact a BellSouth help desk for assistance. Witness Varner also expressed concerns that CLPs might seek BellSouth's assistance in cases where they could readily find answers by examining documentation provided to them by BellSouth. Witness Varner also questioned who would be responsible for manually determining the length of time required to answer a question and how disputes about the adequacy of BellSouth's responses would be resolved.

The Public Staff agreed with witness Varner's view that this metric would be impractical due to the intensive manual effort and subjective judgments that would be required to implement it. The Public Staff doubted that the burdens involved would be justified by the potential benefit. Furthermore, the Public Staff contended that the CLPs have offered no convincing evidence that they are experiencing widespread problems with BellSouth's responsiveness to their queries. If such problems do exist, the Public Staff would encourage the CLPs and BellSouth to address them through cooperation, rather than litigation, whenever possible. Further, the Public Staff remarked that BellSouth should mitigate any concerns about CLP inquiries taxing its staff resources by providing CLPs with clear and accurate documentation and training that would enable them to effectively use BellSouth's systems and interfaces.

COMMISSION CONCLUSIONS - MI-101 Percent Response Commitments Met On Time

The Commission understands that the CLP Coalition is now recommending that if a new improved version of this metric results from the Georgia six-month review, the Commission should then consider any such metric adopted in Georgia prior to the Commission's future review under the following process. The CLPs suggested that they should be allowed to file, in North Carolina, any such adopted Georgia metric 20 days after adoption, and that BellSouth should then be given an opportunity to comment, and that the CLPs should be given an opportunity to file a reply to such comments. The Commission considers this request to be reasonable. Based upon the foregoing, the Commission finds it appropriate to not adopt the CLPs' proposed metric, Percent Response Commitments Met On Time, at this time. However, to the extent that such a response commitment metric is later adopted in Georgia, the CLPs should be allowed to file such a metric, in North Carolina, for further consideration by the Commission. Further, the Commission would remind BellSouth that in order to alleviate any concerns about CLP inquiries taxing its staff resources it should be providing CLPs with clear and accurate documentation and training that would enable the CLPs to effectively use BellSouth's systems and interfaces.

Public Staff Proposed Metric Amendments/Clarifications

(1) O-12 Speed of Answer in Ordering Center
(2) M&R-6 Average Answer Time - Repair Centers

The CLP Coalition did not explicitly address these BellSouth measures in its Proposed Order or Brief, nor did the CLP Coalition discuss or recommend that the Commission adopt its related proposed additional metrics: OP-113 Call Abandonment Rate - Ordering and Provisioning and MR-101 Call Abandonment Rate - Maintenance.

In its Proposed Order, BellSouth asserted that there is no need for the CLPs' additional measures, OP-113 and MR-101, because they simply duplicate the BellSouth proposed measurements, O-12 Speed of Answer in Ordering Center and M&R-6 Average Answer Time - Repair Centers.

In its Proposed Order, the Public Staff noted, however, that CLP Coalition witness Kinard testified that BellSouth only captures the call center response times for those customers who waited for their calls to be completed; thus, ignoring customers who abandon calls after long waits in a queue, thereby artificially enhancing BellSouth's performance. Additionally, the Public Staff also pointed out that BellSouth witness Varner testified that the impact of abandoned calls is already captured in two other measures, Speed of Answer in Ordering Center and Average Answer Time - Repair Centers, both of which include the caller's time in the queue for abandoned calls in the numerator of the calculated statistic.

The Public Staff stated that an examination of the current North Carolina measurement casts doubt on witness Varner's assertion that timings for all calls are included in the calculations for Measure No. O-12, Speed of Answer in Ordering Center. The calculation section of this metric states:

> **Calculation**
>
> **Speed of Answer in Ordering Center = (a ÷ b)**
>
> - a = Total seconds in queue
> - b = Total number of calls answered in the Reporting Period

According to the Public Staff, using the "total number of calls answered" as the denominator in this calculation clearly indicates that the "total seconds in queue" in the numerator also refers only to answered calls. Thus, the Public Staff contended that this contradicts witness Varner's statement that timings from abandoned calls were included in this measurement.

Similarly, the Public Staff explained that the business rules and calculation sections of BellSouth's Measure No. M&R-6, Average Answer Time - Repair Centers also indicate that time spent in the repair service queue is only measured for answered as opposed to abandoned calls. The business rules and the calculation sections state the following:

> **Business Rules**
>
> The clock starts when a CLEC Representative or BellSouth customer makes a choice on the Repair Center's menu and is put in queue for the next repair attendant. The clock stops when the repair attendant answers the call (abandoned calls are not included).
>
> **Calculation**
>
> **Answer Time for BellSouth Repair Centers = (a - b)**
>
> - a = Time BellSouth Repair Attendant Answers Call
> - b = Time of entry into queue after ACD [Automatic Call Distributor] selection
>
> **Average Answer Time for BellSouth Repair Centers = (c ÷ d)**
>
> - c = Sum of all Answer Times
> - d = Total number of calls by reporting period

The Public Staff explained that in this calculation, (a – b) is defined only for calls answered by an attendant. Thus, the Public Staff again asserted that this appears to contradict witness Varner's assertion that the repair center answer time metric reflects time spent in the queue by all calls, including abandoned calls.

In order to eliminate any concerns regarding these metric calculation procedures, the Public Staff recommended that the Commission direct BellSouth to ensure that the number of abandoned calls during the reporting period is included in the call counts for these two metrics, and that the time calls spend in the queue prior to abandonment during the reporting period is also included in the answer time. Given witness Varner's testimony that BellSouth already includes abandoned calls in this number, the Public Staff commented that BellSouth should have no objection to this procedure. Additionally, the Public Staff stated that BellSouth should also revise the business rules and calculation sections for these two metrics to ensure that the total times in the queue and total call counts reflect BellSouth's results for both answered calls and abandoned calls.

Further, in response to the CLPs' statements that they are experiencing lengthy delays in answer times at BellSouth's ordering and repair centers, the Public Staff suggested that BellSouth should be required to count, on either a statewide or regional basis, the number and overall percentage of calls to its Ordering Centers and Repair Centers that are abandoned while in queue during each reporting period. The Public Staff also recommended that BellSouth be required to provide these figures to the Commission for the reporting period beginning immediately after the issuance of a final order in this docket and continue to do so until further notice.

COMMISSION CONCLUSIONS - O-12 Speed of Answer in Ordering Center
M&R-6 Average Answer Time - Repair Centers

Based upon the foregoing and upon our review of the business rules and calculation sections for BellSouth's Measure No. O-12, Speed of Answer in Ordering Center, which is defined as measuring "the average time a customer is in queue", and BellSouth's Measure No. M&R-6, Average Answer Time - Repair Centers, which is defined as measuring "the average time a customer is in queue when calling a BellSouth Repair Center", we agree with the Public Staff's recommendation in this regard. Accordingly, the Commission finds that BellSouth shall be required to ensure that the number of abandoned calls during the reporting period is included in the call counts for Measure No. O-12 and Measure No. M&R-6, and that the time calls spend in queues prior to abandonment during the reporting period is also appropriately included in the answer time calculations. BellSouth should also be required to revise the business rules and calculation sections for these two metrics to make it absolutely clear that the total times in the queue and total call counts reflect BellSouth's results for both answered calls and abandoned calls.

Further, the Commission finds that BellSouth shall be required to count, on either a statewide or a regional basis, the number and overall percentage of calls to its Ordering Centers and Repair Centers that are abandoned while in queue during each reporting period. BellSouth should be required to provide these figures to the Commission for the reporting period beginning immediately after the issuance of a final order in this docket and continuing until further notice.

OVERALL CONCLUSIONS

For the reasons provided in the foregoing discussion, the Commission hereby requires BellSouth to include in its SQM Plan the additional measures and modifications to its existing measures provided below. Further, as previously mentioned, the CLP Coalition proposed several other metrics which were not addressed, herein above, as per the CLP Coalition's Proposed Order, it did not recommend, at this time, any other proposed additional measures other than those discussed in its Proposed Order. Consequently, the Commission declines to require any other of the additional CLP-proposed metrics to be included in BellSouth's SQM Plan. However, the Commission acknowledges that it will consider other additional measures that might be recommended at the time of the Commission's future review of the performance measurements and the remedy plan.

Accordingly, the Commission concludes in regard to the CLP Coalition's proposed additional metrics and additional metric amendments or clarifications, as per the CLP Coalition's Proposed Order, and in regard to the Public Staff's proposed modifications to BellSouth's answer-time related metrics: O-12 and M&R-6, as follows:

OP-104 Percent Order Accuracy

> BellSouth should incorporate Measure No. P-13, the Service Order Accuracy metric, into its current North Carolina SQM Plan and its SEEM Plan, along with all of the same requirements that apply to the metric in the Georgia and Florida SQMs, including the mandated business rules, exclusions, calculation procedures, disaggregation levels, and benchmarks, except to the extent that any of those provisions would be inapplicable to BellSouth's North Carolina operations. [On March 20, 2002, BellSouth advised the Commission that it is now agreeing voluntarily to include the Service Order Accuracy, Measure No. P-13, in its SQM and SEEM Plans.]

OP-105 Percent Completion/Attempts Without A Notice or With Less Than 24 Hours Notice

> BellSouth should incorporate the Percent Completion/Attempts Without a Notice or With Less Than 24 Hours Notice metric into its current North Carolina SQM Plan, along with all of the same requirements that apply to the metric in the Georgia and Florida SQMs, including the mandated business rules, exclusions, calculation procedures, disaggregation levels, and analogs/benchmark, except to the extent that any of those provisions would be inapplicable to BellSouth's North Carolina operations.

OP-120 Percent Completion of Timely Loop Modification/Conditioning on xDSL Loops

> BellSouth should not incorporate the Percent Completion of Timely Loop Modification/Conditioning on xDSL Loops metric into its current North Carolina SQM Plan. Further, in

consideration that BellSouth has implemented changes to capture the time for loop conditioning, which were not reflected in its April 23, 2001 SQM Plan, the revised SQM to be submitted by BellSouth pursuant to a final order in this docket should reflect the change in the business rules for the Average Completion Interval (OCI) & Order Completion Interval Distribution metric (Measure No. P-4).

OP-105 Percent Billing Errors Corrected in X Days

BellSouth should incorporate the Percent Billing Errors Corrected in X Days metric into its current North Carolina SQM Plan, along with all of the same requirements that apply to the metric in the Florida SQM, including the mandated business rules, exclusions, calculation procedures, disaggregation levels, and analogs/benchmarks/diagnostics, except to the extent that any of those provisions would be inapplicable to BellSouth's North Carolina operations.

OP-109 Percent of Hot Cuts Not Working as Initially Provisioned

BellSouth should not incorporate the Percent of Hot Cuts Not Working as Initially Provisioned metric into its current North Carolina SQM Plan. However, BellSouth should include a clarifying statement in its definition for its proposed Measure No. P-6C, Percent Provisioning Troubles Within Seven days of a Completed Service Order, stating that "CLPs can report a trouble as soon as the service order is completed." Additionally, BellSouth should take appropriate care during each hot cut process to ensure that service to new CLP customers is working properly before the order is logged as completed. CLPs should advise the Commission during the upcoming review process if this is not the case.

OP- 119 Percent Successful xDSL Service Testing

BellSouth should not incorporate the Percent Successful xDSL Service Testing metric into its current North Carolina SQM Plan. However, BellSouth should be required to modify its definition for Measure No. P-7, Cooperative Acceptance Testing - Percent of xDSL Loops Tested to include the following statement: "A loop will be considered successfully cooperatively tested when both the CLP and ILEC representatives agree that the loop has passed the cooperative testing". Additionally, the Phrase, "95% of Lines Tested" in the SEEM Analog/Benchmark Section of Measure

No. P-7 should be modified to read "95% of Lines Tested Successfully Pass Cooperative Testing".

CM-101 Percent Change Management Notices Sent On Time
CM-102 Percent Change Management Final Documentation Sent on Time
CM-103 Average Delay Days for Notices
CM-104 Average Delay Days for Documentation
CM-105 Percent ILEC vs. CLP Changes Made

BellSouth has already incorporated Measure Nos. CM-101, CM-102, CM-103, and CM-104 into its current BellSouth North Carolina SQM. BellSouth should not incorporate Measure No. CM-105, Percent ILEC vs. CLP Changes Made, as proposed by the CLPs into its current North Carolina SQM Plan. However, to the extent, in the future, the Georgia Commission adopts a change control implementation fairness metric(s) based upon its six-month review of performance measurements, the CLPs may, thereafter, file such metric(s) in North Carolina, for further consideration by the Commission.

MI-101 Percent Response Commitments Met On Time

BellSouth should not incorporate the Percent Response Commitments Met On Time metric into its current North Carolina SQM Plan. However, to the extent, in the future, the Georgia Commission adopts a response commitment metric, based upon its six-month review of performance measurements, the CLPs may, thereafter, file such metric in North Carolina, for further consideration by the Commission.

O-12 Speed of Answer in Ordering Center and M&R-6 Average Answer Time - Repair Centers

BellSouth should ensure that the number of abandoned calls during the reporting period is included in the call counts for Measure No. O-12 and Measure No. M&R-6, and that the time calls spend in queues prior to abandonment during the reporting period is also appropriately included in the answer time calculations. BellSouth should also revise the business rules and calculation sections for these two metrics to make it absolutely clear that the total times in the queue and total call counts reflect BellSouth's results for both answered calls and abandoned calls.

Further, BellSouth should count, on either a statewide or a regional basis, the number and overall percentage of calls to its Ordering Centers and Repair Centers that are abandoned while in queue during each reporting period. BellSouth should be required to provide these figures to the Commission for the reporting period beginning immediately after the issuance of a final order in this docket and continuing until further notice.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

ISSUE - Business Rules: What are the appropriate business rules?

POSITIONS OF PARTIES

BELLSOUTH: The measurements proposed by BellSouth should be adopted along with the business rules proposed by BellSouth, as described in the revised April 23, 2001 SQM Plan attached to the testimony of BellSouth witness Varner, as Exhibit AJV-1.

CLP COALITION: BellSouth's current metrics have flaws in the business rules and calculations. The appropriate business rules, exclusions, and calculations were presented by CLP Coalition witness Kinard in Exhibits KK-A and KK-B. These Exhibits describe the reasoning behind disputed, missing, or otherwise necessary language for each metric in BellSouth's SQM Plan.

PUBLIC STAFF: BellSouth should designate, in the business rules of any metric in the SQM Plan where the calculation relies on "business days" or "business hours", the specific operating days and/or operating hours that are intended. BellSouth should revise its business rules, wherever applicable, to require that any necessary facilities checks for a Local Service Request (LSR) be completed prior to issuance of the Firm Order Confirmation (FOC). Otherwise, in regard to this issue, the Public Staff does not recommend the adoption of any further additional CLP-proposed changes to the business rules and exclusions included in the SQM Plan at this time.

DISCUSSION

CLP Coalition witness Kinard explained that each metric contains certain components including the basic statement of the definition, exclusions, business rules, calculation formula, and report structure. Witness Kinard further noted that disaggregation, as well as, analog/benchmark standards might also be classified as part of a metric's definition. The issues of disaggregation and analog/benchmark standards have been previously addressed, herein above, in the Evidence and Conclusions for Findings of Facts Nos. 11 and 22, respectively. The discussion of this issue focuses on the business rules and exclusions, consistent with the areas of primary focus in the related narrative of the respective Parties' Proposed Orders.

In its Proposed Order, the CLP Coalition stated that in order to properly measure the service BellSouth provides CLPs against that which it provides its retail customers and affiliates, metrics need to be documented in detail so that clarity exists regarding what will be measured, how long it will be measured, and in what situations a particular event may be excluded from monitoring. Witness Kinard proposed that the metric definitions be structured to eliminate ambiguities, such as the confusion between calendar days and business days, and to clarify the wording. Witness Kinard explained that metrics that are not adequately defined may give misleading results. For example, witness Kinard explained, suppose a metric provides an interval of 30 days, but BellSouth actually calculates the metric based on 30 business days. In this situation, witness Kinard noted that this would provide BellSouth with more time to meet the metric; thus, the performance results showing BellSouth meeting the metric would indicate better performance than may actually be provided.

The CLP Coalition asserted that the business rules are the heart of every measure. According to witness Kinard, the business rules state the start and stop times of each metric, provide details necessary to describe processes that occur in between, and explain how the data will be collected for the CLPs and for BellSouth. Witness Kinard also noted that the business rules need to be detailed enough that a third party may use them to recreate BellSouth's performance measurement reports using BellSouth's raw data and they need to be structured to ensure that any discrimination by BellSouth is not being masked.

Further, in its Proposed Order, the CLP Coalition noted that the business rules issues often require discussion of the substantive aspects of BellSouth's OSS. For example, witness Kinard stated that in the Percent Rejected Service Requests, Measure No. O-7 that BellSouth has proposed, BellSouth has stated that a LSR should be rejected and sent back to the CLP once the first known error is discovered. Witness Kinard explained that this approach means that if a LSR contains more than one error, that order may be rejected several times because only one error at a time may be identified. Witness Kinard noted that multiple rejections, however, of the same order lead to considerable wasted time and effort. Thus, witness Kinard contended that if BellSouth's rejection interval is based on such business rules, then BellSouth's performance may be portrayed as good when, in fact, there is a significant problem with BellSouth's process.[1] Additionally, in instances in which BellSouth issues a facilities pending notice, where no facilities are available following issuance of a confirmation, witness Kinard stated that the due date on the confirmation should be considered as having been missed. Witness Kinard asserted that BellSouth should have completed the facilities check beforehand.

The CLP Coalition stated that there are also exclusions from the applicability of metrics. For example, the CLPs noted that in BellSouth's proposed Reject Interval, Measure No. O-8, which measures how long it takes BellSouth to return a rejection notice to CLPs following their submission of a LSR, the benchmark, as stated by BellSouth witness Varner on cross-examination, is 85% in 24 hours for partially-mechanized and nonmechanized orders. However, witness Varner stated that the 24-hour period, excludes nights, weekends, and all times when the Local Carrier Service Centers (LCSCs) are not in operation, because these orders are handled manually; and thus, employees have to be present. [Note: The Commission notes that, according to the April 23, 2001 SQM Plan, the benchmark is, instead, 85% within 18 hours in 3 months and 85% within 10 hours in 6 months for partially mechanized and 85% within 24 hours for nonmechanized. Additionally, the Commission notes that the partially mechanized benchmark standard becomes higher as more experience is gained.]

The CLP Coalition also acknowledged that there may be legitimate reasons to exclude certain circumstances from a measure. However, the CLPs contended that these exclusions need to be agreed upon so everyone understands what the measure does and does not include. As witness Kinard testified, failure or delay caused by the CLP or the CLP's customer is an example of a reason for excluding a transaction from the data to be reported, at least for remedy purposes.

[1] Witness Kinard testified that BellSouth also has retained a flawed business rule to which even the FCC objected in denying BellSouth's South Carolina and second Louisiana 271 petitions. Witness Kinard stated that the FCC did not agree with BellSouth's measurement of average intervals from the start time of confirmation issuance as they stated the following:

> We find here, as in the BellSouth South Carolina Order, that a far more meaningful measure of parity is one that measures the interval from when BellSouth first receives an order to when service is installed. From a customer's perspective, what is important is the average length of time it takes from when the customer first contacts the carrier for service to when that service is provided. This period of time is a crucial point of comparison between the incumbent's performance and the competing carrier's performance. Therefore, the most meaningful data would measure the interval from when BellSouth first receives an order to when service is actually installed, regardless of whether or not the order electronically flows through BellSouth's operational support systems. This interval can then be compared with the average time from when BellSouth's own service representatives first submit an order for service to when BellSouth completes provision of the service for its retail customers. Unlike the data BellSouth provides, which measure intervals that begin when orders are processed by SOCS, such a measure would expose any delays in the processing of orders. As we stated in the BellSouth South Carolina Order, we expect BellSouth to provide such a measure in future applications.

In the Matter of Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana, CC Docket No. 97-231, Memorandum Opinion and Order, released February 4, 1998, Paragraph 44.

In regard to the matter of a metric calculation, witness Kinard stated that this is the mathematical equation that generates the performance result. Witness Kinard explained that once the appropriate data for a metric have been collected, they can be input into the calculation formula to produce a numerical result.

In its Proposed Order, the CLP Coalition stated that the results of its examination of BellSouth's proposed business rules, exclusions, and calculations for BellSouth's proposed measures are found specifically in witness Kinard's Exhibits KK-A and KK-B, which were attached to the CLP Coalition's Proposed Order, as Appendix 1. The CLP Coalition also noted that the Florida Commission, in its September 10, 2001 *Performance Measurements Order*, adopted BellSouth's business rules, exclusions, and calculations for each metric, with the exception of certain changes specifically reflected in the Florida *Performance Measurements Order*. The CLP Coalition concluded that the Commission should adopt the changes to the specific business rules, exclusions, and calculations as reflected in Exhibits KK-A and KK-B of witness Kinard's direct testimony.

In its Proposed Order, BellSouth asserted that its April 23, 2001 SQM Plan, set forth in Exhibit AJV-1 to the testimony of witness Varner, includes the measures that should be adopted by the Commission. These measurements are, as witness Varner stated, "the result of several years of work with direction provided by state commissions, the FCC and Department of Justice (DOJ) plus input from various CLPs." Further, "[t]his SQM is more than adequate to allow the Commission and the CLPs to monitor BellSouth's performance and to determine that nondiscriminatory access to BellSouth's Operations Support Systems (OSS) is being provided to CLPs in North Carolina."

In regard to witness Kinard's assertion that the business rules need to be detailed enough that a third party may use them to recreate BellSouth's performance measurement reports using BellSouth's raw data, witness Varner responded that BellSouth produces a document titled the Raw Data User's Manual, which does what witness Kinard is suggesting. Witness Varner also stated that if the Raw Data User's Manual were duplicated as part of the business rules in the SQM Plan, as witness Kinard appears to be suggesting, this would unnecessarily double the size of the SQM Plan. Witness Varner asserted that the business rules should be targeted toward helping the reader understand the measurement and should only contain the business logic necessary to apply the user manual to produce the reports from the raw data, i.e., the relevant details for recreating the measurements from raw data should be kept in a separate document.

BellSouth stated that the Commission should find BellSouth's analysis of the disagreements between the Parties as to the business rules that should apply to the measures proposed by BellSouth, as well as the rationale supporting the adoption of BellSouth's position on each measure, to be persuasive. According to BellSouth, its analysis of the Parties' differing proposals on exclusions, business rules, report structure, and data retention are detailed in Exhibit AJV-3, attached to witness Varner's direct testimony.

BellSouth observed that the CLPs' attack on BellSouth's business rules was largely a rehashing of complaints that the CLPs raised, and that were discussed extensively, during the last two years in the context of the generic performance measurements proceedings in Louisiana and

Georgia. BellSouth commented that the CLPs discussed these proposals extensively and, in almost every instance, the CLPs proposals were not adopted in either Louisiana or Georgia. Further, BellSouth asserted that witness Kinard simply repeats these old issues in this docket and offers no real substantive reasons why BellSouth's business rules should now be changed. Accordingly, BellSouth recommended that the Commission adopt the business rules and exclusions in conjunction with the measurements contained in BellSouth's April 23, 2001 SQM Plan.

In regard to witness Kinard's concern about the confusion that can be caused between calendar days and business days, as noted above, the Public Staff stated in its Proposed Order that it shares witness Kinard's concern about the use of the ambiguous terms "business days" or "business hours" as substitutes for the terms "days" or "hours", which the Public Staff understands to refer to calendar days and clock hours, i.e., continuous periods of time. The Public Staff pointed out that while business days and business hours are subject to change whenever BellSouth modifies the schedule of its ordering or repair centers, there is currently no automatic mechanism in the SQM Plan to adjust the metric calculations to account for these changes. Consequently, the Public Staff suggested that, in order to mitigate the possible negative impacts of BellSouth unilaterally changing the operating days and hours of its ordering and maintenance centers, the Commission should require BellSouth to designate, in the business rules of any metric in the SQM Plan whose calculation relies on business days or business hours, the specific operating days and/or operating hours that are intended. The Public Staff recommended that BellSouth be required to provide the Commission with at least 30 calendar days prior notice of any planned changes in the business days or business hours designated in the SQM Plan and to incorporate this change into the SQM Plan that it files pursuant to the final Commission order in this docket and regularly update the SQM Plan to reflect such future changes.

In its Proposed Order, the Public Staff also commented that, although, it agrees with witness Kinard that the business rules for the Percent Rejected Service Requests measure appear to allow BellSouth to reject an incorrectly completed LSR each time it is submitted, until every single error has been corrected, the Public Staff observed that the CLPs are the cause of these errors and they must ultimately bear responsibility for ensuring that correct and complete LSRs are submitted to BellSouth in the first place. Accordingly, the Public Staff asserted that BellSouth should not be required to thoroughly proofread a LSR riddled with errors and to provide the CLPs with a corrected copy to compensate for the CLPs' lack of diligence in preparing the LSR.

However, the Public Staff stated that it did agree with the CLPs that BellSouth should be held responsible for checking the availability of facilities prior to issuing a FOC to the CLPs, as BellSouth has the capability to perform such facilities checks prior to issuing the confirmations. In support of its position, the Public Staff remarked that any arrangement that allows BellSouth to issue a confirmation in cases where it may later be rescinded could represent a source of enormous confusion and dissatisfaction for CLPs and their customers and could severely impact the CLPs' ability to compete. The Public Staff stated that witness Varner's only response to this concern was to characterize it as being irrelevant to performance measurements. The Public Staff disagreed and recommended that the Commission direct BellSouth to revise its business rules, wherever applicable, to require that any necessary facilities checks for a LSR be completed prior to issuance of the FOC. The Public Staff contended that in any cases where BellSouth issues a FOC prior to completing the facilities checks, and then subsequently cancels or delays the order after determining that no facilities are available, then the original due date should be considered to have been missed.

Further, in its Proposed Order, the Public Staff stated that it had reviewed the numerous recommendations for changes to business rules and exclusions proposed by CLP Coalition witness Kinard in Exhibit KK-A to her direct testimony and was not proposing any further changes until it was better able to judge the potential impacts of such changes. However, the Public Staff recommended that the Commission revisit the business rules and exclusions after gaining more experience with the SQM Plan and the SEEM Plan.

As noted in the foregoing discussion, the Parties have referenced four exhibits: Varner's Exhibits AJV-1 and AJV-3, filed with his direct testimony on April 23, 2001, and Kinard's Exhibits KK-A and KK-B, filed with her direct testimony on April 27, 2001. As described by witness Varner, Exhibit AJV-1 is BellSouth's April 23, 2001 SQM Plan, which is a comprehensive compilation and explanation of all of the performance measurements proposed by BellSouth; and Exhibit AJV-3 identifies all of the outstanding issues raised in Exhibit B, which was attached to the July 25, 2000 Task Force Final Report, with regard to business rules, levels of disaggregation, and performance standards along with a BellSouth response after each issue. In regard to Exhibit B, which was attached to the July 25, 2000 Task Force Final Report, the Task Force stated that this Exhibit provides, in detail, the specific issues identified by the Parties with respect to BellSouth's September 1999 SQM Plan. As noted in the Proposed Order of the CLP Coalition, Exhibits KK-A and KK-B provide the appropriate business rules, exclusions, and calculations and the CLPs' reasoning behind disputed, missing, or otherwise necessary language for each metric in BellSouth's SQM Plan. In particular, Exhibit KK-A is titled "Arguments for CLP Business Rule Changes (Exhibit B in Task Force Report)" and Exhibit KK-B is titled "Additional Proposed Business Rule Changes". In addition to these exhibits, the Commission also notes that witness Varner provided two further exhibits attached to his rebuttal testimony, filed May 21, 2001, Exhibits AJV-R2 and AJV-R3. As described by witness Varner, Exhibit AJV-R2 provides BellSouth's position on the changes proposed in Kinard Exhibit KK-A; and Exhibit AJV-R3 provides BellSouth's position on the changes proposed in Kinard Exhibit KK-B. Further, as noted by the CLP Coalition, the Florida Commission in its September 10, 2001 *Performance Measurements Order*, adopted BellSouth's business rules, exclusions, and calculations for each metric, with the exception of certain changes specifically reflected in the *Order*. In that *Order*, the Florida Commission included Attachment 3, beginning on Page 42, which sets forth the Florida Commission's specific additional changes. The Commission has reviewed the foregoing exhibits and the Florida Commission Attachment in order to determine if additional changes should be required to BellSouth's North Carolina SQM.

In regard to witness Kinard's concern about the confusion that can be caused between calendar days and business days, the Commission agrees that the SQM Plan needs to reflect BellSouth's up-to-date operating days and hours in order to prevent misleading performance measurement results and to alleviate other possible negative consequences that may be caused by

BellSouth's unilateral change of its operating days and hours. The Commission agrees with the Public Staff's suggestion that BellSouth should be required to clearly designate, in the business rules of any metric in the SQM Plan whose calculation relies on business days or business hours, the specific operating days and/or operating hours that are intended. Further, BellSouth should be required to provide the Commission with at least 30 calendar days prior notice of any planned changes in the business days or business hours designated in the SQM Plan and should likewise notify the CLPs by posting such notice on BellSouth's relevant website; BellSouth should incorporate this change into the SQM Plan to be filed pursuant to the final Commission order in this docket; and BellSouth should regularly update the SQM Plan to reflect such future changes.

In regard to witness Kinard's objection to BellSouth's process, in conjunction with the Percent Rejected Service Requests, BellSouth's-proposed Measure No. O-7, where a LSR would be rejected and sent back to the CLP once the first known error is discovered, the Commission understands her concern to be that if there are multiple errors, there could be multiple rejections if only one error is identified at a time, resulting in wasted time and effort. However, considering that it is the CLPs who are making the mistakes, which cause such service requests to be rejected, the Commission does not agree with the CLPs in this regard. Consequently, the Commission concludes that BellSouth should not be required to thoroughly and completely check the CLP-submitted LSR for errors in order to provide the CLPs with a fully-corrected LSR. However, as noted in Varner Exhibit AJV-R2, the Commission points out BellSouth's stated position that "if the LSR falls out for manual handling, the LCSC Representative will clarify back to the CLP all errors found in the review." The Commission would recommend that the Commission require BellSouth to continue that process.

In regard to witness Kinard's request that BellSouth complete a facilities check prior to issuing order confirmations, the Commission understands that BellSouth has the capability to perform such facilities checks prior to issuing the FOCs. Thus, in order to avoid significant confusion and CLP-customer frustration caused when the requested service is canceled or delayed upon discovery that facilities are unavailable, the Commission agrees with the CLPs and the Public Staff that BellSouth should be held responsible for checking the availability of facilities prior to issuing a FOC. Accordingly, the Commission finds that BellSouth shall be required to revise its business rules, wherever applicable, to require that any necessary facilities checks for a LSR be completed prior to issuance of the FOC. Furthermore, in situations where BellSouth issues a FOC prior to completing the facilities checks, and then subsequently cancels or delays the order after determining that no facilities are available, then the original due date should be considered to have been missed.

In regard to our review of the business rules and exclusions in the above-captioned exhibits and the Florida Commission's *Performance Measurements Order* Attachment 3, the Commission provides the following additional discussion, comments, and conclusions, on certain measures which were addressed in Kinard Exhibits KK-A and KK-B. The following measures are titled as provided in Kinard's Exhibits. The parenthetical notations following the titles are provided to cross-reference to BellSouth's April 23, 2001 SQM.

◖ MEASURES ADDRESSED FROM EXHIBIT KK-A ◗

- ***OPERATIONS SUPPORT SYSTEMS MEASURES:***

OSS-1 Average Response Time and Response Interval (Pre-Ordering) (OSS-1 in 4/23/01 SQM)

The CLPs stated that the measurement time should begin when BellSouth receives the query from the CLP and should end when BellSouth returns a response to the CLP interface. BellSouth asserted that the CLPs need to review BellSouth's proposed measure and stated that the time intervals start and stop at the appropriate places. The Commission concludes from its review of BellSouth's measure that the measurement time, as requested by the CLPs, is indeed captured in BellSouth's April 23, 2001 SQM. Accordingly, the Commission concludes that there should be no further change in this regard.

In addition, the CLPs requested that syntactically incorrect queries be excluded from the measure. The CLPs remarked that the measure should show how long it takes to return valid query information that is useful to the CLP. Further, the CLPs stated that responses to invalid queries could come more quickly than a response to a valid query, thus diluting the results in terms of how quickly CLPs receive the information sought through a syntactically correct query. BellSouth responded that syntactically incorrect queries are, nonetheless, queries that impact the system. The Florida Commission agreed with the CLPs and found that syntactically incorrect queries should be excluded from this measure. This measure is defined as follows "[a]verage response time and response intervals are the average times and number of requests responded to within certain intervals for accessing legacy data associated with appointment scheduling, service & feature availability, address verification, request for Telephone Numbers (TNs), and Customer Service Records (CSRs)." It appears to the Commission that legacy data associated with appointment scheduling, service & feature availability, address verification, request for TNs, and CSRs would quite likely not even be accessed if the query itself is syntactically incorrect. Thus, the Commission agrees with the CLPs that syntactically incorrect queries should be excluded in order to measure how long it takes to return valid query information to the CLP. Accordingly, the Commission concludes that this measure needs to be appropriately modified.

OSS-2 Interface Availability (Pre-Ordering) (OSS-2 in 4/23/01 SQM)

The CLPs requested that BellSouth should be required to post its own scheduled hours of OSS availability on its website, as it currently does for CLP OSS availability. The CLPs contended that parity of scheduled availability cannot be determined without this information. Further, the CLPs remarked that if the CLPs do not know the starting point of this measure, the usefulness of the percent schedule met is limited. BellSouth responded that since this is a benchmark measurement, the posting of retail OSS availability is irrelevant. In this regard, the Florida Commission's decision noted that reporting for the Regional Negotiation System (RNS) and the Regional Ordering System (ROS) were under development. Upon review of BellSouth's measure, the Commission finds that in the OSS interface availability component of this metric, BellSouth indicates that RNS and ROS which are applicable to only BellSouth are under development. The Commission agrees with the CLPs that BellSouth should be required to post its own scheduled hours of OSS availability on its interconnection website.

OSS-3 Interface Availability (Maintenance & Repair) (OSS-3 in 4/23/01 SQM)

Again, the CLPs requested that BellSouth should be required to post its own scheduled hours of OSS availability on its website as it currently does for CLP OSS availability. The CLPs contended that parity of scheduled availability cannot be determined without this information. Further, the CLPs remarked that if the CLPs do not know the starting point of this measure, the usefulness of the percent schedule met is limited. BellSouth again responded that since this is a benchmark measurement, the posting of retail OSS availability is irrelevant. The Florida Commission agreed with the CLPs and found that BellSouth should post its own scheduled hours of OSS availability. Upon review of BellSouth's measure, the Commission finds that in the OSS interface availability component of this metric, BellSouth indicates BellSouth TAFI (Trouble Analysis Facilitation Interface) availability. The Commission agrees with the CLPs that BellSouth should be required to post its own scheduled hours of OSS availability on its interconnection website.

● ***ORDERING MEASURES:***

OP-1 Percent Flow-through Service Requests (Summary) (O-3 in 4/23/01 SQM)
OP-2 Percent Flow-through Service Requests (Detail) (O-4 in 4/23/01 SQM)
OP-3 Flow-through Error Analysis (O-5 in 4/23/01 SQM)

The CLPs requested that BellSouth's measurements should not exclude orders that fallout to manual processing, through no fault of the CLP. The CLPs stated that BellSouth may measure whether the orders BellSouth has designed to flow-through actually do, but BellSouth should also show the whole story on what orders have not yet been designed to flow-through. BellSouth stated that this issue has been argued repeatedly in other states such as Louisiana and Georgia. BellSouth asserted that the FCC agrees that orders not designed to flow-through for retail should not be assumed to flow-through for CLPs. In support of its position, BellSouth stated that in a February 10, 1999 letter from Lawrence E. Strickling, Chief Common Carrier Bureau, Mr. Strickling stated that "in principle, complex orders that are manually processed for BellSouth's retail customers could be excluded from flow-through calculations." However, BellSouth noted that it has a proposed measure, Percent Achieved Flow-Through, that does not exclude orders designed for manual fallout. The Florida Commission found that

BellSouth should be required to produce separate results with and without manual fallout. The Commission declines to require the CLPs' requested change due to insufficient evidence.

OP-4 Percent Rejected Service Requests (0-7 in 4/23/01 SQM)

The CLPs requested that BellSouth identify all errors in orders in parallel, rather than catching and sending back each error one at a time. BellSouth responded that the CLPs must submit properly formatted Local Service Requests (LSRs). BellSouth stated that BellSouth mechanized OSS process the LSR until an error is detected that prevents further processing and then rejects the LSR back to the CLP for clarification. Additionally, BellSouth stated that if the LSR falls out for manual handling, the LCSC Representative will clarify back to the CLP all errors found in the review. The Florida Commission found that BellSouth's edit routines were appropriate. The Commission, in accordance with its previous discussion, herein above, on this request, concludes that BellSouth should not be required to thoroughly and completely check the CLP-submitted LSR for errors in order to provide the CLPs with a fully-corrected LSR.

OP-5 Reject Interval (O-8 in 4/23/01 SQM)

The CLPs stated that the measured interval should end upon delivery by BellSouth of a response to the CLP interface. The CLPs contended that BellSouth should measure the entire interval up to the point that it returns the rejected LSR to the CLP. BellSouth asserted that the CLPs need to review BellSouth's proposed measure and stated that the time intervals start and stop at the CLP interface, as requested. The Florida Commission agreed with the CLPs, however it noted that the business rules proposed by BellSouth did require a date/time stamp in the ALEC interface (EDI, LENS, or TAG), whereas, previously, the date/time stamp had been in LEO. The Commission concludes from its review of BellSouth's measure that the measurement time, as requested by the CLPs, is indeed captured in BellSouth's April 23, 2001 SQM. Accordingly, the Commission finds that there should be no further change in this regard.

OP-6 Firm Order Confirmation (FOC) Timeliness (O-9 in 4/23/01 SQM)

The CLPs stated that the measured interval should end upon delivery by BellSouth of a response to the CLP interface. The CLPs stated that BellSouth should be accountable for the time in which the FOC is in its possession. Further, the CLPs commented that for mechanized orders, the end time should be the date/time stamp in EDI/LENS/TAG, and for nonmechanized orders, the end time should be the actual stop time from the fax server as it uses the date/time stamp from the fax for the receipt of the order. BellSouth asserted that the CLPs need to review BellSouth's proposed measure for start and stop times. BellSouth observed that these have changed since the CLPs originally made these comments. Further, BellSouth stated that measuring the stop time for nonmechanized orders at Local Order Numbering (LON) is an appropriate measuring point. BellSouth asserted that there is little difference in this time and the time when the FOC is automatically sent to the fax server. The Florida Commission agreed with the CLPs, however they noted that the business rules proposed by BellSouth did require a date/time stamp in the ALEC interface (EDI, LENS, or TAG) and also noted that for nonmechanized orders, BellSouth is using the date/time stamp that reflects the time the rejection is automatically sent back to ALECs via LON, which automatically sends a fax to the ALEC. The Commission concludes from its review of BellSouth's measure that the measurement time, as requested by the CLPs, is captured in BellSouth's April 23, 2001 SQM. Accordingly, the Commission finds that there should be no further change in this regard.

The CLPs also contended that BellSouth should confirm facilities availability for all orders, not just trunks, before issuing a confirmation. The CLPs remarked that if the CLPs cannot depend on the due date given them then confirmations are useless. The CLPs noted that too often in BellSouth territory CLPs receive confirmations immediately followed by notice that the order is being held for facilities. The CLPs believe that facilities checks should be a standard requirement for all orders. BellSouth responded that it does not check facilities on its retail orders prior to issuing a due date, to do so for the CLPs would discriminate against retail and add cost and time to the process. The Florida Commission agreed with the CLPs that BellSouth should be required to conduct electronic facilities checks to ensure due dates delivered in FOCs can be relied on. The Commission, in accordance with its previous discussion, herein above, on this request, concludes that BellSouth should be required to revise its business rules, to require that any necessary facilities checks for a LSR be completed prior to issuance of the FOC in order for the CLPs to be able to depend on the due date provided.

● ***PROVISIONING MEASURES:***

OP-8 Mean Held Order Interval and Distribution Intervals (P-1 in 4/23/01 SQM)

The CLPs contended that BellSouth must not be allowed to exclude canceled orders from this metric. The CLPs noted that often this will make the performance look better than it is as CLPs cancel orders when it appears that BellSouth will not have the facilities to fill those orders for months and customers may request cancellations themselves if the CLP cannot tell them how long they have to wait for their order to be completed. Thus, according to the CLPs, if canceled orders are excluded, the metric will not show the real story of how often CLP orders are held for facilities or other reasons. BellSouth responded that this is a parity measure and it excludes canceled orders for both CLP and BellSouth records. BellSouth asserted that if canceled orders are not excluded for CLP data, the retail analog would no longer be viable. Further, BellSouth commented that it should not be held accountable for orders canceled by CLPs or BellSouth retail customers. BellSouth also stated that facility delays are displayed on the report and if CLPs want to investigate other types of reasons held, the data is available in the raw data file. The Florida Commission agreed with the CLPs regarding held orders and found that BellSouth should capture all orders held past due dates, not only those open at the close of the reporting period. The Commission declines to require the CLPs' requested change due to insufficient evidence.

OP-9 Average Jeopardy Notice Interval Percentage of Orders Given Jeopardy Notices (P-2 in 4/23/01 SQM)

The CLPs stated that canceled orders should not be excluded from the measure. Additionally, the CLPs stated that BellSouth should be required to remove its exclusion of orders submitted through nonmechanized methods. Further, the CLPs contended that elapsed time should continue through weekends and holidays to capture the full length of the notice interval. BellSouth responded that BellSouth's measurement does not exclude canceled orders and nonmechanized orders. BellSouth noted that the CLPs needed to review BellSouth's proposed measures. Further, BellSouth stated that the elapsed time does include weekends and holidays and this does capture the full length of the notice interval. Accordingly, the Commission believes that the measure captures what the CLPs have requested, and thus, orders no further change in this regard.

OP-10 Percent Missed Installation Appointments (P-3 in 4/23/01 SQM)

The CLPs requested that the business rules be changed to reflect that Disconnect (D) and From (F) orders should be disaggregated and reported separately, rather than be excluded as BellSouth proposes. The CLPs commented that they need to see that their requests to disconnect customers from service are timely as well. Further, the CLPs stated that the end time for xDSL orders should include successful continuity testing with the CLP, particularly if the CLPs' proposed measure on acceptance testing is not adopted. Additionally, the CLPs remarked that, for CLPs, the interval should end with the issuance of the completion notice. BellSouth responded that D and F orders are correctly excluded from this metric. Further, BellSouth stated that D and F orders might skew the data masking the misses on inward orders. BellSouth stated that cooperative testing time intervals are included. Additionally, BellSouth stated that the interval appropriately stops with the delivery of service and the interval for completion notices is included as a separate measurement. The Florida Commission disagreed with the CLPs and stated that the measure was intended to focus on installation appointments; it found no justification for changing the exclusion of D and F orders. The Commission declines to require any further change due to insufficient evidence.

OP-11 Average Completion Interval/Order Completion Interval (OCI) Distribution (P-4 in 4/23/01 SQM)

The CLPs stated that D and F orders, as well as expedite orders, should be disaggregated and reported separately, rather than be excluded as BellSouth proposes. BellSouth responded that the inclusion of D and F orders was considered and discarded by the Collaborative Group in the Louisiana Workshops because of the possibility of masking more important inward orders. The Florida Commission did not agree with any changes to the exclusions for this metric. The Commission declines to require this change due to insufficient evidence.

Further, the CLPs are requesting that BellSouth modify its business rules to reflect the appropriate interval, such that the appropriate starting point for this measure would be when BellSouth receives a valid LSR and the appropriate ending point would be when a completion notice is sent to the CLP. The CLPs stated that both the New York and Texas performance measures plans begin this interval with the date that a valid service request is received, not when the order is entered into the Service Order Control System (SOCS), as proposed by BellSouth. BellSouth begins to measure the interval when the FOC is generated and the interval, as stated by BellSouth, appropriately stops with the delivery of service. BellSouth also noted that the additional interval for completion notices is included as a separate measurement. Additionally, BellSouth stated that the SQM Plan has measurements which capture the entire experience for the CLP customer at logical process points; the Reject Interval, FOC Interval, Order Completion Interval, and Completion Notice Interval reports capture every segment of the process; and the Total Service Order Cycle Time report captures the time requested by the CLPs. The Florida Commission's decision was that it partially agreed with the CLPs; it concluded that the interval should begin when the FOC is generated, as BellSouth proposed, and should end when a completion notice is sent to the CLP, as the CLPs proposed. The Commission declines to require any further change due to insufficient evidence.

OP-12 Average Completion Notice Interval (P-5 in 4/23/01 SQM)

The CLPs requested that BellSouth be required to remove its exclusion of the nonmechanized and partially mechanized orders. The CLPs also requested that BellSouth modify its business rules to indicate that the measured interval ends upon delivery by BellSouth of a notice of completion to the CLP interface or, if manual, the date/time stamp for the fax machine or server. BellSouth responded that no such exclusions are included in BellSouth's measure and noted the date/time stamps are in the correct place, as requested by the CLPs. The Florida Commission agreed with the CLPs, however, it stated that it found that in BellSouth's measure that BellSouth had removed the exclusion for both nonmechanized and partially mechanized orders; and it also noted that BellSouth's measure has included an end time stamp of when the notice is transmitted to the ALEC interface and that the end time stamp for nonmechanized orders should be the time stamp from the fax server via LON. Accordingly, the Commission believes that the measure captures what the CLPs have requested, and thus, orders no further change in this regard.

OP-13 Coordinated Customer Conversions - Hot Cut Timeliness % Within Interval and Average Interval (P-6A in 4/23/01 SQM)

The CLPs requested that canceled orders should be included to capture all hot cut activity. The CLPs also requested that the measurement be modified to include the entire hot cut interval or be replaced with the hot cut timeliness measure requested by the CLPs. Further, the CLPs stated that it is important that not only the start time of the cut, but the entire interval, including acceptance testing with the CLPs be included in the measure. BellSouth responded that BellSouth has no control over why a customer cancels an order. Additionally, BellSouth stated that it has four hot cut measures that capture every aspect of the hot cut process. The Florida Commission disagreed with the CLPs and found that canceled orders should be excluded. The Commission declines to require these changes due to insufficient evidence.

OP-14 Percent Provisioning Troubles (P-8 in 4/23/01 SQM)

The CLPs proposed that the metric should include all trouble reports arising from the same order. BellSouth stated that this measure counts the first trouble in this report. Further, BellSouth stated that subsequent troubles are counted in the Percent Repeat Troubles within 30 days report. The Florida Commission found that BellSouth was appropriately capturing the troubles in its measurement. The Commission declines to require this change due to insufficient evidence.

● ***MAINTENANCE & REPAIR MEASURES***:

MR-1 Missed Repair Appointments (M&R-1 in 4/23/01 SQM)

The CLPs stated that BellSouth may exclude customer provided or CLP equipment troubles from the metric, but that it should report the number of exclusions monthly. Further, the CLPs requested that the business rules should provide that the end time should be when the CLP receives notice that the service is restored. BellSouth responded that if the CLPs want to analyze CPE [Customer Premises Equipment] troubles, it can use the Raw Data file for this report to isolate and evaluate such troubles. Additionally, BellSouth stated that before the BellSouth technician completes the trouble, he must notify the end user and call the CLP if a number is provided. The Florida Commission disagreed with the CLPs' request and stated that causes for the missed repair appointments are included in the data retained, and the ALECs have the capability of investigating the problem when necessary. Additionally, the Florida Commission disagreed with the CLPs' request regarding the end time, and noted that for analog purposes it is necessary that this comparability be maintained. As for the matter of separate reporting, the Commission agrees with BellSouth that if the CLPs need to analyze CPE troubles, they can use the Raw Data file for this report to isolate and evaluate such troubles. The Commission declines to require the CLPs' changes.

MR-3 Maintenance Average Duration (M&R-3 in 4/23/01 SQM)

The CLPs stated that BellSouth may exclude customer and CLP equipment troubles from the metric, but that such troubles should be reported separately. Additionally, the CLPs stated that the trouble report should not be considered closed or service restored until the CLP is given notice. The CLPs also stated that BellSouth should not exclude troubles that have lasted more than 10 days. As stated above, if the CLPs want to analyze CPE troubles, they can use the Raw Data file for this report to isolate and evaluate such troubles; and before the BellSouth technician completes the trouble, he must notify the end user and call the CLP if a number is provided. Further, BellSouth stated that it has changed its position such that BellSouth's measure no longer excludes troubles greater than 10 days. The Florida Commission disagreed with the CLPs' request for separate reporting and stated that the data is retained and the ALECs have the capability of investigating the problem when necessary. Additionally, the Florida Commission agreed with the CLPs that trouble reports greater than 10 days have to be removed from exclusion in the BellSouth measurement. The Commission believes that the measure now partially captures what the CLPs have requested, such that troubles that have lasted more than 10 days are no longer excluded. As for the matter of separate reporting, the Commission agrees with BellSouth that if the CLPs need to analyze CPE troubles, they can use the Raw Data file for this report to isolate and evaluate such troubles. Accordingly, the Commission finds that there should be no further change in this regard.

MR-4 Percent Repeat Troubles in 30 Days (M&R-4 in 4/23/01 SQM)

Again, as stated in MR-3, the CLPs maintained that customer and CLP equipment trouble exclusions should be reported separately. Further, the CLPs contended that the denominator for the metric should be all repeat troubles received in the month, rather than all troubles closed. BellSouth responded, as stated above, that if the CLPs want to analyze CPE troubles, they can use the Raw Data file for this report to isolate and evaluate such troubles. In regard to the CLPs' calculation proposal, BellSouth asserted that the calculation provided for in its measurement is correct, i.e., it correctly calculates the percent of total troubles that were repeated during the month. Further, BellSouth stated that maintenance measures always use closed troubles; and troubles not closed one month will be closed and counted in the next month. The Florida Commission disagreed with the CLPs' request. The Commission declines to require the CLPs' changes.

● *BILLING MEASURES:*

BL-1 Invoice Accuracy (B-1 in 4/23/01 SQM)

The CLPs stated that Invoice Accuracy should not be based on adjustment dollars, as BellSouth is in control of whether or not it grants an adjustment and is therefore in control of the outcomes of this measurement. BellSouth responded that its Billing measures are appropriate to use and remarked that they have been approved in several states and are also used by other RBOCs. In the Florida Commission's decision, in this regard, the Florida Commission stated that "[w]e agree that this measure presents problems; however, no evidence has been provided to correct the deficiencies in the measure. We propose adding the number of bills and bill adjustments to the current metric." The Commission is concerned that this measure may need to be adjusted as BellSouth is apparently in control of the adjustments, but at this time we recommend that the Commission decline to require any changes due to insufficient evidence.

BL-2 Mean Time to Deliver Invoices (B-2 in 4/23/01 SQM)

The CLPs stated that this measure should be modified to be based on percent invoices received on time, or the Commission should adopt the Percent On-Time Mechanized Local Service Invoice Delivery measure proposed by the CLPs. Again, BellSouth stated that its Billing measures are appropriate to use and remarked that they have been approved in several states and are also used by other RBOCs. The Florida Commission disagreed with the CLPs' proposal. As previously discussed, in Issue No. 41, regarding the CLPs' additional proposed metrics, the Percent On-Time Mechanized Local Service Invoice Delivery measure proposed by the CLPs, was not one of the measures requested for adoption in the CLP Coalition's Proposed Order. The Commission declines to require this change due to insufficient evidence.

BL-3 Usage Data Delivery Accuracy (B-3 in 4/23/01 SQM)

The CLPs stated that the metric calculation should reflect the number of records, not data packs, delivered accurately. BellSouth explained that data packs are what are actually sent to the other companies and that it appears that data packs and records are synonymous. Again, BellSouth stated that its Billing measures are appropriate to use and remarked that they have been approved in several states and are also used by other RBOCs. In the Florida Commission's decision, in this regard, the Florida Commission stated that "[w]e agree that the measure shall be modified to reflect records rather than data packs." The Commission declines to require any changes due to insufficient evidence.

BL-6 Mean Time to Deliver Usage (B-6 in 4/23/01 SQM)

The CLPs believe that this measurement should begin with the generation of data by the CLP retail customer or CLP access customer (by the AMA recording equipment associated with the CLP switch). The CLPs contended that this would ensure that all usage (local and associated access) are covered by this metric. Again, BellSouth stated that its Billing measures are appropriate to use and remarked that they have been approved in several states and are also used by other RBOCs. Additionally, BellSouth stated that BellSouth captures local usage on local interconnection trunks and captures access usage for Loop + Port Combo customers. Further, BellSouth commented that it appears that the Parties agree on this issue. In the Florida Commission's decision, in this regard, the Florida Commission stated that "[w]e find that the BellSouth measure shall be modified to reflect differences between date data is mailed and date data is generated by customer/Total record volume delivery." The Commission declines to require any changes due to insufficient evidence.

- ***OPERATOR SERVICES AND DIRECTORY ASSISTANCE MEASURES:***

OD-1 OS/DA Speed to Answer Performance/Average Speed to Answer
(OS-1 in 4/23/01 SQM)

The CLPs stated that BellSouth should not exclude call abandonment times from the calculation of this metric. Again, BellSouth stated that its measures are appropriate to use and remarked that they have been approved in several states and are also used by other RBOCs. Further, BellSouth asserted that abandoned call time is counted in this measure. The Florida Commission agreed that abandoned calls should be included and found that BellSouth's metric did not exclude abandoned calls. The Commission agrees with BellSouth that its proposed measures for both Operator Services and Directory Assistance do not exclude abandoned calls. The metric calculations specifically state that the Total Queue Time, the numerator, "includes time that answered calls wait in queue as well as time abandoned calls wait in queue prior to abandonment." Accordingly, the Commission finds that there should be no further change in this regard.

OD-2 OS/DA Speed to Answer Performance/Percent Answered in X Seconds
(OS-2 in 4/23/01 SQM)

The CLPs proposed that OS/DA performance be measured with a single metric, but disaggregated for OS and DA. Again, BellSouth stated that its measures are appropriate to use and remarked that they have been approved in several states and are also used by other RBOCs. BellSouth stated that the data is currently being produced in two separate reports. Further, BellSouth contended that it should not have to endure the expense of combining these two reports. The Florida Commission found that BellSouth's proposed method for capturing the metric was appropriate. The Commission declines to require this change due to insufficient evidence.

● *TRUNK GROUP PERFORMANCE MEASURES:*

TG-1 Trunk Group Performance - Aggregate (TGP-1 in 4/23/01 SQM)
TG-2 Trunk Group Performance - CLP Specific (TGP-2 in 4/23/01 SQM)

The CLPs are seeking the inclusion of 911 trunks in these measures along with the OS/DA Trunks that BellSouth has agreed to add. BellSouth stated that E911 and OS/DA Trunks are common trunks over which the blocking experience of all customers will be equal. BellSouth asserted that the CLPs need to review BellSouth's proposed measures. BellSouth explained that TGP-1 (Trunk Group Performance-Aggregate) and TGP-2 (Trunk Group Performance-CLEC Specific) provide a comparison of the blocking experience of CLP and BellSouth customers over their respective trunks sampled 24 hours a day. The Florida Commission stated that it was unclear what the ALECs were proposing in this regard. The Commission points out that, as noted in the Introduction of Exhibit AJV-3, these two trunking measures were not in the September 1999 SQM, but because of the perceived importance of trunking measures, BellSouth introduced two new trunking measures, TP-1 (Trunk Group Performance-Aggregate) and TP-2 (Trunk Group Performance-CLEC Specific) in its Spring 2000 SQM. The Commission finds that there should be no further changes in this regard.

● *COLLOCATION MEASURES:*

CO-1 Collocation Average Response Time (C-1 in 4/23/01 SQM)

The CLPs stated that augments of existing collocation should be included in this metric. The CLPs commented that CLPs require timely responses when seeking to augment existing collocations as well as when initiating new collocation arrangements. BellSouth responded that augments are included. BellSouth has agreed to disaggregate augments for this metric. The Commission points out that BellSouth's proposed measure reflects disaggregation for Virtual-Augment, Physical Caged-Augment, and Physical Cageless-Augment. Accordingly, the Commission finds that there should be no further changes in regard to the business rules for this metric.

C-2 Collocation Average Arrangement Time (C-2 in 4/23/01 SQM)

The CLPs asserted that BellSouth should not be allowed to remove permit time when calculating this measure. The CLPs stated that BellSouth should be accountable for the intervals for which it is responsible for having work completed. BellSouth asserted that the CLPs need to review BellSouth's proposed measures. In Varner Exhibit AJV-R2, BellSouth responded that permit time cannot be included, as BellSouth is not responsible for handling this work.

However, in Varner Exhibit AJV-3, which was filed a month prior to the filing of Exhibit AJV-R2, BellSouth stated that BellSouth no longer excludes permit time from its measure. The Commission concludes that this metric be structured to be consistent with the Commission decision, in this regard, in our generic collocation proceeding, Docket No. P-100, Sub 133j. Specifically, in the Commission *Order Addressing Collocation Issues*, issued on December 28, 2001, the Commission found that the need, if any, to obtain building permits should not extend the collocation provisioning intervals. Consequently, the Commission found that the ILECs may not exclude time required to obtain building permits from the provisioning intervals provided, however, if an intractable timing problem exists, an ILEC may seek a waiver from the Commission upon a showing .of extraordinary circumstances.

Further, the CLPs contended that a collocation should not be considered complete until the CLP accepts the collocation and the associated cable assignment information is provided and also noted that this requirement has been adopted in New York and other states in the Verizon region. BellSouth contended that its measure uses the appropriate end point, the clock stops when the CLP has been notified that the arrangement is complete. In this regard, the Florida Commission agreed with the CLPs. The Commission again concludes that this metric be structured to be consistent with the Commission decision, in this regard, in our generic collocation proceeding, Docket No. P-100, Sub 133j. Specifically, in its *Order* issued December 28, 2001, the Commission found that the ILEC should not be required to provide circuit facility assignments until the collocation space is ready for use by the CLP and the equipment to be installed in the collocation space has been verified by the CLP. Accordingly, the Commission finds that there should be no change concerning this measure's end point.

C-3 Collocation Percent Due Dates Missed (C-3 in 4/23/01 SQM)

The only CLP comment on this measure was "[s]ee CO-1 and CO-2". The Commission believes that the business rule at issue, here, pertained to the CLPs' request that augments of existing collocation should be included in this metric. Consistent with our conclusions for CO-1, above, the Commission finds that there should be no further changes in regard to the business rules for this metric.

◀ NEW LNP ISSUES SUBMITTED REGARDING July 2000 BellSouth SQM ▶
(Measures addressed from the LNP section at the end of Exhibit KK-A)

● ***ORDERING MEASURES:***

OP-9 LNP - Percent Rejected Service Requests (O-13 in 4/23/01 SQM)

The CLPs stated that BellSouth should be required to remove the exclusion of nonmechanized LSRs. BellSouth asserted that the CLPs need to review BellSouth's proposed measures and stated that manual LSRs are not excluded.

The Florida Commission agreed with the CLPs and noted, however, that BellSouth had eliminated this exclusion. The Commission agrees with BellSouth that its proposed metric in its April 23, 2001 SQM, O-13 LNP - Percent Rejected Service Requests, includes nonmechanized LSRs. In O-13 LNP, the business rules define nonmechanized as "a valid LSR which is faxed or mailed to the BellSouth LCSC" and nonmechanized is included in the report structure. Accordingly, the Commission believes that the measure now captures what the CLPs have requested, and thus, no further change in this regard is ordered.

OP-10 LNP - Reject Interval Distribution & Average Reject Interval (O-14 in 4/23/01 SQM)

The CLPs stated that BellSouth should be required to remove the exclusion of nonmechanized LSRs. Again, BellSouth stated that manual LSRs are not excluded. BellSouth stated that the start and stop times are the same as for other rejects which is at the entry and exit points to the system (LENS, TAG, EDI, Fax Server). The Florida Commission agreed with the CLPs and noted, however, that BellSouth had eliminated this exclusion. The Commission notes that in BellSouth's proposed measure in its April 23, 2001 SQM, O-14 LNP-Reject Interval Distribution & Average Reject Interval, the business rules define nonmechanized and include nonmechanized in the report structure. Accordingly, the Commission believes that the measure now captures what the CLPs have requested, and thus, no further change in this regard is ordered.

O-11 LNP - FOC Timeliness Interval Distribution & FOC Average Interval (O-15 in 4/23/01 SQM)

The CLPs stated that BellSouth should be required to remove the exclusion of nonmechanized LSRs. However, the CLPs noted that BellSouth's measure does not specifically exclude nonmechanized LSRs. Again, BellSouth stated that manual LSRs are not excluded. BellSouth stated that the start and stop times are the same as for other rejects which is at the entry and exit points to the system (LENS, TAG, EDI, Fax Server). The Florida Commission agreed with the CLPs and noted, however, that the reporting of nonmechanized was under development. The Commission notes that in BellSouth's proposed measure in its April 23, 2001 SQM, O-15 LNP - FOC Timeliness Interval Distribution & FOC Average Interval, the business rules define nonmechanized and include nonmechanized in the report structure. Accordingly, the Commission believes that the measure now captures what the CLPs have requested, and thus, no further change in this regard is ordered.

● *PROVISIONING MEASURES:*

***OP-10 LNP - Percent Missed Installation Appointments** (P-10 in 4/23/01 SQM)
*This is a different measure from the previously discussed OP-10 LNP

The CLPs again requested changes to the exclusions, such that the measure should be modified to include nonmechanized orders. Again, BellSouth stated that manual LSRs are not excluded. The Florida Commission agreed with the CLPs and noted, however, that BellSouth had eliminated this exclusion. The Commission notes that in BellSouth's proposed measure in its April 23, 2001 SQM, P-10 LNP - Percent Missed Installation Appointments, the exclusions and business rules do not indicate that nonmechanized orders are to be excluded. Accordingly, the Commission believes that the measure now captures what the CLPs have requested, and thus, no further change in this regard is ordered.

OP-11 LNP - Average Disconnect Timeliness Interval & Disconnect Timeliness Interval Distribution (P-11 in 4/23/01 SQM)

The CLPs requested changes to the exclusions, such that the measure should be modified to include nonmechanized orders. Again, BellSouth stated that manual LSRs are not excluded. The Florida Commission agreed with the CLPs and noted, however, that BellSouth had eliminated this exclusion. The Commission notes that in BellSouth's proposed measure in its April 23, 2001 SQM, P-11 LNP - Average Disconnect Timeliness Interval & Disconnect Timeliness Interval Distribution, the exclusions and business rules do not indicate that nonmechanized orders are to be excluded. Accordingly, the Commission believes that this measure now captures what the CLPs have requested in this regard.

The CLPs also requested that BellSouth be required to actually perform the disconnect activity before completing the service order in SOCS. BellSouth responded that this measure is designed to measure the exact time when the CLP customer's number has been disconnected from the BellSouth switch. Further, BellSouth explained that the D or C Order may be completed by the system at the close of business that day, hours after the work operation is complete. The Florida Commission agreed with the CLPs and noted, however, that BellSouth's measure reflects this proposal. In this regard, the Commission finds that there should be no further change.

OP-12 LNP - Total Service Order Cycle Time (TSOCT) (P-12 in 4/23/01 SQM)

The CLPs stated that BellSouth should be required to remove the exclusion of nonmechanized LSRs. Further, the CLPs requested that BellSouth be required to actually perform the disconnect activity before completing the service order in SOCS. BellSouth responded that this measure combines the intervals of FOC Timeliness, Average Order Completion Interval (OCI), and Average Completion Notice Interval (ACNI) to show the complete life cycle of a service request. The

Commission notes that BellSouth's proposed metric in its April 23, 2001 SQM, P-12 LNP - TSOCT, includes nonmechanized LSRs. In P-12 LNP, the business rules state that nonmechanized LSRs are included in the report structure. Accordingly, the Commission finds that there should be no further change in this regard.

◀ MEASURES ADDRESSED FROM EXHIBIT KK-B ▶

● *ORDERING MEASURES:*

O-1 Acknowledgment Message Timeliness (O-1 in 4/23/01 SQM)

The CLPs requested that the business rule for this measure be clarified such that "[i]f more than one CLEC uses the same ordering center, an Acknowledgment Message will be returned to the 'Aggregator', however, BellSouth will not be able to determine which specific CLEC this message represented." The CLPs stated that obtaining individual results is vital to CLPs. Further, the CLPs noted that this measure is especially critical as it is a proposed Tier 1 measure in BellSouth's remedy plan. BellSouth noted that the acknowledgment response is a low level machine-to-machine communication, and thus, if BellSouth receives a data packet containing requests from several CLPs, the details of data packet content are not revealed at this point. BellSouth explained that this means an acknowledgment is sent to the source of the request, the Aggregator, not to the individual CLPs. Further, BellSouth noted that if CLP-specificity is truly vital to the CLP, then the CLP itself should submit the LSR rather than using a third party. The Florida Commission found that BellSouth should be required to clarify the business rule in this regard. The Commission concludes that BellSouth should modify the business rules to include an additional statement, which explicitly states that if the CLP desires a CLP-specific acknowledgment, then the CLP, itself, should submit the LSR rather than using a third party.

O-3 to O-6 Flow-Through Measures (O-3, O-4, O-5 in 4/23/01 SQM)

The CLPs requested that total flow-through and flow-through for orders designed to flow-through be measured separately. The Commission declines to require this change due to insufficient evidence. (See OP-1, OP-2, and OP-3 discussed herein above).

O-8 Reject Interval (O-8 in 4/23/01 SQM)
O-9 FOC Timeliness (O-9 in 4/23/01 SQM)

This issue concerns the CLPs' request that BellSouth be required to do electronic facilities checks to ensure that the due dates delivered in FOCs can be relied upon. The Commission, as previously discussed, concluded that BellSouth should be required to revise its business rules, wherever applicable, to require that any necessary electronic facilities checks for a LSR be completed prior to issuance of the FOC. The Commission also notes that this is consistent with what was ordered in the Florida Commission's decision.

O-11 FOC and Reject Response Completeness (O-11 in 4/23/01 SQM)

The CLPs stated that BellSouth should include partially mechanized and nonmechanized orders. BellSouth responded that this measurement already includes FOC and Reject Responses for partially mechanized orders and that the measurement will be modified to include manual (nonmechanized) orders with the May 2001 data, reported in June 2001. The Florida Commission agreed with the CLPs that partially mechanized and nonmechanized orders should be included in the metric. Accordingly, the Commission agrees that nonmechanized orders should be included and orders BellSouth to modify its measure to reflect the inclusion of nonmechanized LSRs, as it has stated it was going to do in May 2001.

O-13 LNP-Percent Rejected Service Requests (O-13 in 4/23/01 SQM)

The CLPs stated that BellSouth has added manual LNP orders to this metric, which resolves this issue.

O-14 LNP-Reject Interval Distribution & Average Reject Interval
(O-14 in 4/23/01 SQM)

The CLPs stated that BellSouth has added manual LNP orders to this metric, which resolves this issue.

- ***PROVISIONING MEASURES:***

P-6A Coordinated Customer Conversions - Hot Cut Timeliness Percent Within Interval and Average Interval (P-6A in 4/23/01 SQM)

The CLPs contended that this metric should be clarified to make clear that an early cut would be included as a missed appointment if the cut was restarted within the original window. The CLPs stated that a 30 minute buffer, as proposed by BellSouth, is excessive. Additionally, the CLPs stated that different intervals for Integrated Digital Loop Carrier (IDLC) are inappropriate and unjustified. BellSouth responded that a 15 minute interval on either side (plus or minus) of a scheduled cut time is clearly reasonable for this type of activity. BellSouth explained that efforts such as these require some level of flexibility in establishing a window of cutover start times. Further, BellSouth commented that if a cutover involves IDLC, the interval should be longer to account for the additional work content that is included. BellSouth asserted that it is unreasonable for a cutover that begins within the specified window to be considered a missed appointment. The Florida Commission disagreed with the CLPs' assertion that a plus or minus

15 minutes of schedule start time is excessive. The Commission agrees with BellSouth and orders no further change in this regard.

P-6B Coordinated Customer Conversions - Average Recovery Time
(P-6B in 4/23/01 SQM)

The CLPs stated that only verified end-user and CLP-caused reasons should be excluded, i.e., the CLP has to agree. BellSouth responded that it does work with the CLPs to correctly identify the cause of an outage occurring prior to completion. BellSouth stated that this requires that the CLP involved does not unreasonably withhold agreement with the determination that the outage was caused by the CLP or end user. The Florida Commission agreed that exclusions relating to end-user and CLP-caused reasons should require ALEC agreement. Accordingly, the Commission concludes that this measure should be clarified to reflect that the exclusion of CLP-caused reasons and end-user caused reasons need to be verified with the CLP..

P-7 Cooperative Acceptance Testing - % of xDSL Loops Tested
(P-7 in 4/23/01 SQM)

The CLPs stated that BellSouth should report the number of exclusions (CLP-caused failures monthly) so CLPs can determine whether their reports do not match up. BellSouth did not respond to this request. The Florida Commission stated "we agree that the number of exclusions shall be captured in the raw data so that ALECs can verify accuracy." The Commission agrees with the CLPs and the Florida Commission. Accordingly, BellSouth needs to capture the number of CLP-caused failures monthly in the raw data.

- ***MAINTENANCE AND REPAIR MEASURE:***

M&R-3 Maintenance Average Duration (M&R-3 in 4/23/01 SQM)

The CLPs stated that BellSouth should clarify what it means by a "correct" repair request and how a CLP is informed that the reporting of trouble is incorrect. BellSouth responded that a correct repair request is provided in the format specified by BellSouth to properly identify the type of trouble. Further, BellSouth stated that the CLP is informed if the trouble is not correct at the time it is submitted. The Florida Commission agreed with the CLPs that a clarification would be useful. The Commission finds that BellSouth should include additional language in its business rules for this measure explaining a correct repair request and how a CLP is informed if the trouble is not correct when submitted.

●*BILLING MEASURE:*

B-2 Mean Time to Deliver Invoices (B-2 in 4/23/01 SQM)

The CLPs stated that bills rejected because of BellSouth formatting or content errors should be included. BellSouth asserted that the CLPs' position is unclear. BellSouth stated that Mean Time to Deliver Invoices should only be based on the time it takes to deliver correct invoices. According to BellSouth, if the invoice contains formatting or content errors, this fact is identified in measurement B-1, Invoice Accuracy. Further, BellSouth commented that this design allows the measurements to capture distinct aspects of the billing process. The Florida Commission agreed with the CLPs that bills rejected because of BellSouth formatting or content errors should be included. The Commission notes that BellSouth's proposed measure excludes "any invoices rejected due to formatting or content errors." The Commission declines to propose any change due to insufficient evidence.

●*DATABASE UPDATE INFORMATION MEASURE:*

D-3 Percent NXXs and LRNs Loaded by LERG Effective Date (D-3 in 4/23/01 SQM)

The CLPs asserted that BellSouth's business rules should not define the interval by the completion of initial interconnection trunk groups when that happens after the LERG effective date. Otherwise, according to the CLPs, BellSouth could delay delivery of trunks to cover late LERG updates. The CLPs contended that the LERG effective date should be the end time in all cases. BellSouth noted that the benchmark for this measurement is 100% by the LERG effective date. However, BellSouth explained that an exclusion is identified for situations where the CLP interconnection trunks are not in place by that date due to the fact that the CLPs have not completed their work. BellSouth asserted that the CLPs' delay is the reason for this exclusion. Further, BellSouth commented that if the delay is caused by BellSouth, this occurrence would reflect a missed objective. Consequently, BellSouth stated there is no incentive for BellSouth to delay trunk delivery, since this action would show up as a benchmark miss and an increase in trunk blockage. The Florida Commission disagreed with the CLPs and found no change was needed. The Commission declines to require any change due to insufficient evidence.

● *CHANGE MANAGEMENT MEASURES:*

CM-3 Timeliness of Documents Associated with Change (CM-3 in 4/23/01 SQM)

The CLPs stated that BellSouth's proposed exclusion for dates that slip less than 30 days "for reasons outside BellSouth control" is too broad. BellSouth responded that the exclusion, "for reasons outside BellSouth control", provides examples "such as changes due to Regulatory mandate or [CLP] request" to describe the types of events that would be excluded. Thus, BellSouth asserted that this exclusion is not too broad, if read, in light of the examples given. The Florida Commission agreed with the CLPs that BellSouth needed to further clarify this statement. The Commission agrees that the exclusion language as follows, "[d]ocumentation for release.dates that slip less than 30 days for reasons outside BellSouth control, such as changes due to Regulatory mandate or CLEC request", is too open-ended. The Commission encourages the CLP Coalition and BellSouth to negotiate mutually agreeable language for this exclusion component that more explicitly addresses the "reasons outside BellSouth control."

CM-5 Notification of CLEC Interface Outages (CM-5 in 4/23/01 SQM)

The CLPs stated that BellSouth should explain how it verifies an outage and the interval between first notice of outage and verification. The CLPs noted that if this interval is long, the notice could be delayed and still appear to be on time because of "verification" condition. BellSouth responded that before informing CLPs of an interface outage, BellSouth must be reasonably certain that an actual outage exists. The Florida Commission disagreed with the CLPs that any change was needed at this time. The Commission notes that the business rules for this metric state "[t]his measure is designed to notify the CLEC of interface outages within 15 minutes of BellSouth's verification that an outage has taken place." The Commission agrees with the CLPs that BellSouth should be required to explain how it verifies an outage and the interval between first notice of outage and verification.

OVERALL CONCLUSIONS

Based upon the foregoing discussion and conclusions, the Commission finds it appropriate to require BellSouth to include in its SQM Plan the additional modifications/clarifications to its existing measures as follows:

- ***OPERATIONS SUPPORT SYSTEMS MEASURES:***

OSS-1 Average Response Time and Response Interval (Pre-Ordering/Ordering)

Syntactically incorrect queries should be excluded from the measure, in order to show how long it takes to return valid query information to the CLP.

OSS-2 Interface Availability (Pre-Ordering/Ordering)

BellSouth should post its own scheduled hours of OSS availability on its website.

OSS-3 Interface Availability (Maintenance & Repair)

BellSouth should post its own scheduled hours of OSS availability on its website.

- *ORDERING MEASURES:*

O-1 Acknowledgment Message Timeliness

BellSouth should modify the business rules to include an additional statement, which explicitly states that if the CLP desires a CLP-specific acknowledgment, then the CLP, itself, should submit the LSR rather than using a third party.

O-8 Reject Interval
O-9 FOC Timeliness

BellSouth should revise its business rules, wherever applicable, to require that any necessary facilities checks for a LSR be completed prior to issuance of the FOC.

O-11 FOC and Reject Response Completeness

BellSouth should modify its measure to reflect the inclusion of nonmechanized LSRs, as it has stated it was going to do.

- *PROVISIONING MEASURES:*

P-6B Coordinated Customer Conversions - Average Recovery Time

BellSouth should clarify this measure to reflect that the exclusion of CLP-caused reasons and end-user caused reasons need to be verified with the CLP.

P-7 Cooperative Acceptance Testing - % of xDSL Loops Tested

BellSouth should capture the number of CLP-caused failures monthly in the raw data.

- *MAINTENANCE & REPAIR MEASURE:*

M&R-3 Maintenance Average Duration

BellSouth should include additional language in its business rules for this measure explaining a correct repair request and how a CLP is informed if the trouble is not correct when submitted.

- *COLLOCATION MEASURE:*

C-2 Collocation Average Arrangement Time (C-2 in 4/23/01 SQM)

BellSouth should incorporate appropriate language into this measure to reflect that it may not exclude time required to obtain building permits from the provisioning intervals, i.e., time to obtain building permits should not extend the collocation provisioning interval, consistent with the Commission decision, in this regard, in the generic collocation proceeding, Docket No. P-100, Sub 133j.

● *CHANGE MANAGEMENT MEASURES:*

CM-3 Timeliness of Documents Associated with Change

BellSouth's exclusion language as follows, "[d]ocumentation for release dates that slip less than 30 days for reasons outside BellSouth control, such as changes due to Regulatory mandate or CLEC request", is too open-ended. The Commission encourages the CLP Coalition and BellSouth to negotiate mutually agreeable language for this exclusion component that more explicitly addresses the "reasons outside BellSouth control."

CM-5 Notification of CLEC Interface Outages

BellSouth should explain how it verifies an outage and the interval between first notice of outage and verification.

● *OTHER RELATED MATTER:*

The SQM Plan needs to reflect BellSouth's up-to-date operating days and hours in order to prevent misleading performance measurement results and to alleviate other possible negative consequences that may be caused by BellSouth's unilateral change of its operating days and hours. BellSouth should be required to clearly designate, in the business rules of any metric in the SQM Plan whose calculation relies on business days or business hours, the specific operating days and/or operating hours that are intended. Further, BellSouth should be required to provide the Commission with at least 30 calendar days prior notice of any planned changes in the business days or business hours designated in the SQM Plan and should likewise notify the CLPs by posting such notice on BellSouth's relevant website; BellSouth should incorporate this change into the SQM Plan to be filed pursuant to the final Commission order in this docket; and BellSouth should regularly update the SQM Plan to reflect such future changes.

IT IS, THEREFORE, ORDERED as follows:

1. That the CLP Coalition's Motion to Take Judicial Notice of the Florida Public Service Commission's September 10, 2001 *Final Order Requiring Performance Assessment Plan* (PSC-01-1819-FOF-TP - Docket No. 000121-TP) is hereby granted.

2. That the Commission clarifies that this Order concerns a performance measures and remedy plan only for BellSouth. The Commission notes that Verizon South, Inc. and Carolina Telephone and Telegraph Company and Central Telephone Company are currently operating under Stipulated Plans. The Commission shall consider appropriate performance measures and remedy plans for other ILECs as deemed appropriate in the future.

3. That based on BellSouth's March 20, 2002 letter, the Service Order Accuracy measure shall be included in the permanent performance measures plan as well as the SEEM plan adopted herein.

4. That the performance measurement plan and remedy plan adopted herein shall become effective on June 21, 2002.

5. That no later than June 21, 2002, BellSouth shall file a revised copy of the North Carolina SQM and remedy plan to reflect changes made pursuant to this Order.

6. That consistent with Finding of Fact No. 1, BellSouth shall file a revised copy of Section C-2 of Appendix C to the North Carolina SQM by no later than June 21, 2002.

7. That consistent with Finding of Fact No. 14, the Parties shall file a statement on the negotiation process on customer-impacting measures to include in the remedy plan by no later than July 22, 2002.

8. That consistent with Finding of Fact No. 16, the Parties shall file a statement on the negotiation process on duplicative or correlated measures by no later than July 22, 2002.

9. That consistent with Finding of Fact No. 20, BellSouth and the CLP Coalition shall revise the document containing the Florida Staff proposal concerning periodic performance reviews consistent with the Public Staff's recommended modifications and file a copy with the Commission no later than June 21, 2002, with the exception that reviews will be held annually rather than semiannually.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of May, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

bp052202.01

Appendix A
Page 1 of 4

GLOSSARY OF ACRONYMS
Docket No. P-100, Sub 133k

Act	Telecommunications Act of 1996
ACNI	Average Completion Notice Interval
ADSL	Asymmetric Digital Subscriber Line
ALEC	Alternative Local Exchange Carrier
ARMIS	Automated Reporting Management Information System
AT&T	AT&T Communications of the Southern States, Inc.
BellSouth	BellSouth Telecommunications, Inc.
BFR	Bona Fide Request
BOC	Bell Operating Company
BRI ISDN	Basic Rate ISDN
BST	BellSouth Telecommunications Company, Inc.
CCP	Change Control Process
CLEC	Competitive Local Exchange Company (Carrier)
CLP	Competing Local Provider
CLP Coalition	AT&T Communications of the Southern States, Inc., MCImetro Access Communications Services, LLC, WorldCom, Inc., Covad Communications Company, Mpower Communications, Inc., Access Integrated Networks, Inc. and Birch Telecom of the South, Inc.

Appendix A
Page 2 of 4

Commission	North Carolina Utilities Commission
CPE	Customer Premises Equipment
CSOTS	CLP Service Order Tracking System
D	Disconnect
DOJ	Department of Justice
DSL	Digital Subscriber Line
DUF	Daily Usage File
EDI	Electronic Data Interchange
EEL	Extended Enhanced Loop
F	From
FCC	Federal Communications Commission
FOC	Firm Order Confirmation
HDSL	High Speed Digital Subscriber Loop/Line
IDLC	Integrated Digital Loop Carrier
ILEC	Incumbent Local Exchange Company (Carrier)
ISDN	Integrated Services Digital Network
KPMG	KPMG Consulting Inc.
LCSC	Local Carrier Service Center
LEC	Local Exchange Company (Carrier)
LENS	Local Exchange Negotiation System
LERG	Local Exchange Routing Guide

Appendix A
Page 3 of 4

LMU	Loop Make-Up
LNP	Local Number Portability
LON	Local Order Numbering
LRN	Location Routing Number
LSR	Local Service Request
MSA	Metropolitan Statistical Area
NXX	Prefix portion of a telephone number
OCI	Order Completion Interval
OS/DA	Operator Services/Directory Assistance
OSS	Operations Support Systems
PIC	Presubscribed Interexchange Carrier
PIP	Performance Incentive Plan
PMAP	Performance Measurement Analysis Platform
PON	Purchase Order Number
POTS	Plain Old Telephone Service
PRI ISDN	Primary Rate ISDN
PSC	Public Service Commission
Public Staff	Public Staff-North Carolina Utilities Commission
RNS	Regional Negotiation System
ROS	Regional Ordering System
SEEM	Self-Effectuating Enforcement Mechanism

Appendix A
Page 4 of 4

SOCS	Service Order Control System
Sprint	Carolina Telephone and Telegraph Company and Central Telephone Company and Sprint Communications Company, L.P.
SQM	Service Quality Measure or Measurement
SWBT	Southwestern Bell Telecommunications
TA96	Telecommunications Act of 1996
TAFI	Trouble Analysis Facilitation Interface
TAG	Telecommunications Access Gateway
TGP	Trunk Group Performance
TN	Telephone Number
TSOCT	Total Service Order Cycle Time
UCL	Unbundled Copper Loop
UCL-ND	Unbundled Copper Loop – Nondesigned
UDC/IDSL	Unbundled Digital Channel/Integrated Digital Subscriber Line
UNE	Unbundled Network Element
UNE P	Unbundled Network Element Platform
Verizon	Verizon South, Inc., f/k/a GTE South, Inc.
VSEEM	Voluntary Self-Effectuating Enforcement Mechanism
WorldCom	WorldCom, Inc., including MCImetro Access Transmission Services, LLC

DOCKET NO. E-2, SUB 808

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Sean P. Cabot, 2133 Rolling Rock Road,)
Wake Forest, North Carolina 27587,)
Complainant)
) RECOMMENDED ORDER
v.)
)
Carolina Power & Light Company,)
Respondent)

HEARD: Tuesday, August 20, 2002, at 10:00 a.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Hearing Examiner Sammy R. Kirby

APPEARANCES:

For Carolina Power & Light Company:

Len Anthony, Manager – Regulatory Affairs, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Gisele Rankin, Staff Attorney, Public Staff-North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326

BY THE HEARING EXAMINER: On May 24, 2002, Sean Cabot (Complainant) filed a complaint seeking a bill adjustment as to electric service provided to him by Carolina Power and Light Company (CP&L).

The complaint was served on CP&L by Commission Order of May 28, 2002. CP&L filed an answer on June 14, 2002, asserting that Complainant should be held responsible for the full amount of charges allowed by the statute of limitations. CP&L's answer was served on the Complainant on June 19.

Complainant requested a hearing by filing of June 27, and a hearing was scheduled for the time and place indicated above by Commission order of July 2. The hearing was held as scheduled. Complainant testified in his own behalf. CP&L offered stipulations at the hearing, but no witnesses.

Based upon the testimony and stipulations presented at the hearing, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Complainant Sean Cabot is a residential customer of CP&L at his address in Wake Forest. Complainant's present residence was constructed in 1998-99. Before that, Complainant was a customer of CP&L at a residence in Knightdale.

2. At the previous residence, Complainant's wife paid all utility bills, including CP&L's bills for electric service.

3. During construction of the new residence, Complainant took care of paying all bills related to the construction. Temporary electric service was established at the construction site in the name of the builder. The Cabots had a cost-plus agreement with the builder, and the builder gave the electric bills that he received to Complainant and Complainant paid them.

4. The new residence was completed in early 1999. Complainant called CP&L to remove the temporary service and install a permanent meter, and this was done in February 1999. CP&L began providing electric service to the new residence, but CP&L failed to read the meter or to send any electric bill to Complainant for approximately 37 months.

5. At the new residence, Complainant's wife continued her practice of paying the utility bills; however, she did not pay for electric service. Complainant assumed that his wife was paying for electric service since she had done so in the past and she was paying the other utility bills. Complainant's wife assumed that Complainant was paying for their electric service because he had paid for electric service during construction.

6. In March 2002, CP&L discovered that it had not been billing Complainant for electric service. At that time, the meter indicated usage of 115,220 kWh.

7. If CP&L is allowed to recover for 36 months of usage, Complainant will owe $8,476. If CP&L is only allowed to recover for 150 days of usage, Complainant will owe $1,177.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The findings of fact are based upon the testimony of Complainant and the stipulations of CP&L at the hearing.

CP&L stipulated that it failed to render any electric bill to Complainant for approximately 37 months from the time electric service was established at his new residence in February 1999. CP&L further stipulated that if it is allowed to recover for 36 months of usage, Complainant will owe $8,476 and that if it is allowed to recover for only 150 days of usage, Complainant will owe $1,177.

Complainant testified that his wife paid all utility bills at their previous residence, including bills for electricity, water, telephone, and cable television. He and his wife started construction of a new home in 1998. Temporary electric service was established at the construction site, and temporary service was billed to the builder. The temporary service was not in Complainant's name. The builder received the electric bills during construction and gave them to Complainant, and Complainant paid them. Complainant had a cost-plus agreement with the builder, and Complainant handled all of the construction-related bills that needed to be paid during construction. The new residence was completed in February 1999, and Complainant called CP&L to have the temporary service removed and a meter installed. CP&L installed a permanent meter in February 1999. Complainant testified, "And when the house closed, my wife had assumed that I was continuing to pay the bills that I was paying during the construction process and I had assumed that she was going to take over as we had done in the past at our other home and take up . . . paying the bills. Three years went by." Complainant testified that a CP&L representative knocked on his door in March 2002, read the meter, and said that he would be back in touch. Thereafter, CP&L sent a bill for over eight thousand dollars. Complainant testified that "we've got three young children. I had a business. I was very busy and I thought my wife was handling it. My wife thought I was handling it . . . we don't converse a lot about whose duties it is to pay the bills. We had that set up and we were crossed in our communication . . . . [T]he bill was never sent to us, but we did not realize that." Complainant testified that his wife paid the water bills at the new residence, even though he had paid the water bills during construction. He explained, "They [the water company] sent the bill. And she would handle all bills that were addressed to our name. But we never received a bill from CP&L."

Commission Rule R8-44 addresses situations where an electric utility charges a customer either more or less than the amount provided by Commission-approved rates. The relevant sections of Rule R8-44 (with emphasis added) provide as follows:

> (3) If the utility has undercharged any consumer as the consequence of a fraudulent or willfully misleading action on that consumer's part, or any such action by any person other than the employees or agents of the company, such as tampering with, or bypassing the meter where it is evident that such tampering or bypassing occurred during the residency of that consumer, or if it is evident that a consumer has knowledge of being undercharged without notifying the utility as such the utility shall recover the deficient amount as provided by the following:
>
> a. If the interval during which the consumer was undercharged can be determined, then the utility shall collect the deficient amount incurred during that entire interval, provided that the applicable statute of limitations is not exceeded.

....

> (4) If the Utility has undercharged any consumer as the result of a misapplied schedule, an error in reading the meter, a skipped meter reading, or any other human, machine, or meter error, except as provided in (3) above, then the utility shall recover the deficient amount as provided by the following:
>
> a. If the interval during which a consumer having a demand of less than 50 KW was undercharged can be determined, then the utility may collect the deficient amount incurred during that entire interval up to a maximum of 150 days....

Complainant relies upon section (4), which would limit CP&L's recovery to 150 days. He argues that he did what was required of him by ordering permanent service upon completion of the new residence and that CP&L was at fault in failing to bill him. He argues, "It is not the responsibility of the homeowner to check and see that the billing practices of the utilities are functioning properly." CP&L, on the other hand, argues that section (3) applies and that it should be allowed to recover for the full period allowed by the statute of limitations, which is three years. CP&L argues that the distractions and crossed communications cited by Complainant might justify his overlooking the absence of electric bills for several months, but not for three years.

The Hearing Examiner concludes that Rule R8-44 is the applicable standard for deciding this case. The Rule addresses undercharges by electric utilities caused by any human or machine error and is broad enough to include the present situation, where some unspecified CP&L error resulted in no bill being sent to Complainant for an extended period.

In the ordinary course of business, a creditor's failure to send a bill does not excuse the debt, and the creditor can still recover the full amount due, subject to the statute of limitations. The Commission could have written Rule R8-44 to this effect, but it did not. Instead, the Commission established a unique balance of equities in Rule R8-44. Depending upon the combination of several factors addressed in the Rule, the Rule allows recovery of undercharges either for the full period allowed by the statute of limitations, for 12 months, for 150 days, or for "an appropriate estimated usage and/or demand." Overall, the Rule puts a greater obligation on the electric utility to bill properly (and gives a greater advantage to the customer) than the statute of limitations.[1] In situations like the present, where the electric utility erroneously undercharges a customer and the period of undercharges can be determined and the customer's demand is less than 50 KW, recovery is limited to 150 days, "except as provided in (3)." Subsection (3) provides that where "it is evident that a customer has knowledge of being undercharged without notifying the utility," the maximum recovery under the statute of limitations is allowed. Therefore, the decisive question is whether it is evident that Complainant had knowledge that he was not being billed for electric service. If it is, recovery for 3 years is allowed; if it is not, recovery is limited to 150 days. The Hearing Examiner concludes that recovery should be limited to 150 days for the following reasons.

[1] . In a similar fashion, Rule R6-15 puts a greater obligation to bill properly on natural gas utilities. Rule R6-15(b) and (c) limit a gas utility's recovery to a maximum of one year in cases where its gas meter under-registered or stopped.

There was a crucial difference of opinion at the hearing as to what type of knowledge Rule R8-44(3) requires. CP&L posed the issue as "whether the consumer should have known he was being undercharged." The Public Staff, on the other hand, argued that Rule R8-44(3) "means more than 'should have known.' It means that there's actual positive proof that the customer knew and did not take any action." The Hearing Examiner concludes that Rule R8-44(3) requires that the customer have actual knowledge that he was being undercharged. This conclusion is based on the language of the Rule. The Rule could have been written in terms of what a reasonable man should have known in similar circumstances, but it is not. The Rule is instead written in terms of the particular customer involved: it requires that "a consumer has knowledge..." (emphasis added). Moreover, the Rule requires that "it is evident that a customer has knowledge..." (emphasis added). "Evident" is defined as "Easily recognizable or perceived; clear; obvious"; it "impl[ies] the presence of visible signs or circumstances that make the thing in question clear to the eye or, by inference, to the mind." American Heritage Dictionary of the English Language, p. 455 (1982). The language of Rule R8-44(3) supports the conclusion that the customer must have actual knowledge that he was being undercharged before subsection (3) applies.

Interpreting the Rule this way does not create a loophole that a customer can easily exploit. The Hearing Examiner assumes that there will be few cases of failure to bill, but even if there are others, the complainant has the burden of proof and the Commission is the judge of credibility. Just as the student cannot get away with "The dog ate my homework," so the electric customer cannot simply say, "I didn't know. For three years, I didn't know." The Commission does not have to accept the testimony of any witness, even if uncontradicted by other evidence. Utilities Commission v. Telephone Co., 285 NC 671, 688 (1974). In this case, however, the Hearing Examiner believes this complainant.

The only testimony at the hearing was presented by Complainant. Complainant's demeanor as a witness was favorable, and cross-examination did not impeach his credibility. Further, Complainant did not simply say that he did not know. Complainant gave an explanation as to why he did not know, and the explanation is believable. He attributed his lack of knowledge to unique circumstances, not likely to re-occur. These circumstances revolve around Complainant and his wife building a new residence which altered the couple's usual practice of paying utility bills. Complainant paid the electric bills associated with the construction of the new residence, and he testified that his wife assumed that he was continuing to do so after construction. He, on the other hand, assumed that she had resumed her prior practice of paying all utility bills. Complainant testified that they never discussed the matter and never discovered their crossed communications. When coupled with the demands of running a business and raising three young children in today's environment, the explanation is plausible. CP&L argued that the passage of three years "suggests that it was intentional." It is true that such an inference could be drawn, and the Hearing Examiner might reach such a conclusion with another witness in another case. In this case, however, the Hearing Examiner finds Complainant's testimony to be credible.

The Hearing Examiner concludes that Complainant did not have knowledge that he was being undercharged and that CP&L may recover from him for undercharges up to a maximum of 150 days, as provided in Rule R8-44(4). Complainant shall be allowed to pay the amount in installments, as provided by Rule R8-44(4)d.

IT IS, THEREFORE, ORDERED that the complaint filed in this docket on May 24, 2002, should be, and hereby is, decided as hereinabove provided.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of October, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

Rg102502.01

DOCKET NO. E-2, SUB 811

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Blanca Gonzalez, 410 North Leak Street, #4)
Southern Pines, North Carolina 28387,)
Complainant) RECOMMENDED ORDER
) GRANTING COMPLAINT
v.)
)
Carolina Power & Light Company,)
Respondent)

HEARD: Thursday, September 5, 2002, at 10:00 a.m., Commission Hearing Room 2115, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina

BEFORE: Hearing Examiner Sam Watson

APPEARANCES:

For the Complainant:

No attorney of record

For Carolina Power & Light Company:

Len S. Anthony, Manager – Regulatory Affairs, Progress Energy Service Company, 410 S. Wilmington Street/PEB 17A4, Raleigh, North Carolina 27602

WATSON, HEARING EXAMINER: By letter filed with the Commission on June 18, 2002, Blanca Gonzalez (Complainant) filed a complaint against Carolina Power & Light Company (CP&L) alleging that she was not responsible for the electricity charges associated with an account established in the name of Blanca Gonzalez at 625 West South Street, Raleigh, North Carolina. By Order issued June 19, 2002, the Complaint was served upon CP&L. On July 9, 2002, CP&L filed its answer and a Motion to Dismiss.

This matter came on for hearing as ordered on September 5, 2002. The Complainant testified on her own behalf. CP&L presented the testimony of Carlos Lopez-Angel.

Based upon the pleadings, the testimony received into evidence during the hearing, and the record as a whole, the Hearing Examiner now makes the following:

FINDINGS OF FACT

1. CP&L is duly organized as a public utility company under the laws of the state of North Carolina and is subject to the jurisdiction of the Commission. CP&L is engaged in the business of generating, transmitting, and selling electric power to the public of North Carolina, including the Complainant's residence at 410 North Leak Street, Southern Pines, North Carolina, the City of Raleigh and the Town of Rose Hill.

2. The Complainant has never requested or received electric service from CP&L in the Town of Rose Hill or the City of Raleigh.

3. The Complainant is not responsible for the payment of any of the electricity charges associated with an account established in the name of Blanca Gonzalez at 625 West South Street, Raleigh, North Carolina.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The evidence in support of the findings is found in the testimony of the Complainant and CP&L witness Lopez-Angel.

The genesis of the complaint in this proceeding is as follows: On November 8, 1999, an account was established with CP&L in the name of Blanca Gonzalez at 1241 West Charity Road, Rose Hill, North Carolina. Service at this address was terminated on February 14, 2001. This account was secured with a $170 deposit and had an outstanding balance of $235.88 when the account was closed. The customer at this address gave CP&L a forwarding address of 625 West South Street, Raleigh, North Carolina at the time she moved from Rose Hill. Also on February 14, 2001, the customer who had been receiving service at the address on West Charity Road in Rose Hill opened an account with CP&L in the name of Blanca Gonzalez at 625 West South Street in Raleigh, North Carolina. CP&L applied both the $170 deposit and the $235.88

outstanding debt from the Rose Hill account to the new account in Raleigh. The Blanca Gonzalez responsible for the Raleigh account failed to make any payments for the electric service rendered by CP&L, and on April 24, 2001, the service was disconnected for non-payment, leaving an outstanding balance of $343.40.

On November 2, 2001, the Complainant applied for service in the name of Blanca Gonzalez at 410 North Leak Street #4, Southern Pines, North Carolina. Subsequent to the establishment of service for the Complainant in Southern Pines, CP&L determined that the Complainant was the same Blanca Gonzalez that had been responsible for the account in Raleigh, and on December 11, 2001, CP&L transferred the outstanding balance from the Raleigh account in the amount of $343.40 to the Complainant's new Southern Pines account. The Complainant has consistently denied being the Blanca Gonzalez responsible for the Raleigh account and has consistently denied ever living in the city of Raleigh.

CP&L witness Lopez-Angel testified that during a conversation with the Complainant, she admitted having lived in Rose Hill. Therefore, since CP&L's business records, kept in the ordinary course of business, established that the person responsible for the Rose Hill account was the same person responsible for the Raleigh account, CP&L concluded that the Complainant must be the same Blanca Gonzalez responsible for the Raleigh account.

Upon examination by the Hearing Examiner on this issue – in particular, the conversation in which the Complainant allegedly admitted to CP&L witness Lopez-Angel that she had lived in Rose Hill – the Complainant specifically denied this admission. She explained that when CP&L witness Lopez-Angel asked her about Rose Hill, she believed he was referring to the person she believed had stolen cash and various other items, including identification documentation, from her and that she was interested in this person's address so that she could attempt to recover the stolen items.

Based upon the entire testimony of the witnesses in this case, the Hearing Examiner accepts the Complainant's explanation with regard to the conversation between herself and CP&L witness Lopez-Angel. The Complainant has consistently denied ever having lived in Raleigh. The Hearing Examiner believes that CP&L witness Lopez-Angel and the Complainant simply misunderstood each other during the telephone conversation in question. Given this situation and the fact that the only evidence presented by CP&L of a relationship between the Blanca Gonzalez in Raleigh and the Complainant is the telephone conversation just described above, the Hearing Examiner finds that the Complainant is not responsible for the electric charges associated with the Raleigh account.

IT IS, THEREFORE, ORDERED that the Complaint filed in this docket should be, and the same hereby is, granted.

ISSUED BY ORDER OF THE COMMISSION
This the 18th day of September, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

rg091702.02

DOCKET NO. E-7, SUB 675

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Mr. and Mrs. Sterling Baker, 309 Engleman)
Avenue, Burlington, North Carolina 27215-4803,)
Complainants)
) ORDER DISMISSING COMPLAINT
v.) DUE TO LACK OF JURISDICTION
) AND CLOSING DOCKET
Duke Power, a Division of Duke Energy)
Corporation,)
Respondent)

BY THE COMMISSION: This complaint proceeding was filed on September 15, 2000. Mr. and Mrs. Sterling Baker, the Complainants, asked the North Carolina Utilities Commission (Commission) to award them monetary damages in the amount of $1,830.00 for actions allegedly taken by Duke Power, a Division of Duke Energy Corporation (Duke) to restore power after a severe storm which occurred in their area on or about May 25, 2000. On October 9, 2000, Duke filed its Answer and Motion to Dismiss the Complaint on the grounds that the Complainants sought relief in the form of monetary damages. On October 18, 2000, in response to the answer, the Complainants requested a hearing. On November 1, 2000, an Order Scheduling Hearing was issued setting a hearing in this docket for November 29, 2000, at 9:30 a.m., in Burlington, North Carolina. On November 17, 2000, Duke requested that the November 29, 2000, hearing be continued. An order was issued by the Chair granting the continuance. On November 21, 2000, an Order Rescheduling Hearing was issued setting the new hearing date for January 11, 2001, at 1:00 p.m. in the same location. Duke orally requested that the Commission rule upon its Motion to Dismiss prior to holding the hearing. On January 4, 2001, the hearing scheduled for January 11, 2001, was canceled and the Chair issued an order continuing the hearing indefinitely.

On January 31, 2001, the Complainants filed a document described as an addendum. The document alleged Duke's removal of a pole from the creek near their home, and Duke's failure to remove two (2) support cables. Complainants asked that this addendum be incorporated into their complaint and that the Commission give their complaint further review. In its discretion the Commission treated the "addendum" as an amendment to the original complaint. On February 21, 2001, Duke filed a Motion to Dismiss Amended Complaint for Lack of Jurisdiction pursuant to Rule R1-7(4). After receiving numerous additional filings, the Chair, on April 10, 2001, issued an Order Closing Docket.

On July 20, 2001, the Complainants filed a document dated July 17, 2001. The Complainants protested the Order Closing Docket issued by the Chair on April 10, 2001. On August 28, 2001, the Chair issued an Order Reopening Docket and Requesting Additional Information. In so doing, the Chair requested that Duke, on or before September 10, 2001, verify to the Commission in writing that all poles, cable, wires and debris of any kind that is or could be attributable to the work and service provided by Duke had been removed from the creek near the Complainants' home and that the property in the vicinity of the Complainants' home had been left in a condition reasonably similar to its condition prior to Duke's work in the area on or about May 25, 2000. Upon receipt of written verification from Duke, the Commission would give the Complainants an opportunity to respond to same. The Chair reserved the right to make further rulings at a later date concerning this matter and Duke's pending Motion to Dismiss Amended Complaint for Lack of Jurisdiction pursuant to Rule R1-7(4).

On September 10, 2001, Duke filed its Response to Order Reopening Docket and Requesting Additional Information. In its response, Duke reiterated its position that the "Original Complaint and the Addendum are claims for damages over which the Commission does not have subject matter jurisdiction." Duke's response also contained the Affidavit of Randall F. Councilman, a Site Coordinator in the Electric Distribution Department of Duke, verifying that no debris such as poles, wires, cables, etc., attributable to the restoration work on or near the Complainants' property or the service provided by Duke on the property still existed. Again, Duke restated its position that any claim that the Complainants' property is not in a condition "reasonably similar to its condition prior to Duke's work in the area on or about May 25, 2000" due to flooding of the adjacent creek constitutes the claim for damages set forth in the Original Complaint and Addendum. Accordingly, Duke requested that the Commission dismiss the Original Complaint and Addendum for lack of subject matter jurisdiction.

On September 24, 2001, the Complainants filed a Reply to Duke's Response. The Complainants recognize that the Commission does not have jurisdiction to award monetary damages, but state that they are seeking a different remedy with the "Amended" complaint. Complainants state that, in amending their original complaint, they are asking that Duke provide top soil and that the $600 labor cost for cleaning debris from the creek would be pursued by other means. The Complainants dismiss the Affidavit of Randall F. Councilman as being non-responsive to the relief sought. The Complainants further state that Duke cleaned out poles, wires, cables, etc., only after they brought their complaint before the Commission. Complainants conclude that the only relief sought is that of requiring Duke to restore their top soil.

On October 23, 2001, Duke filed its Response to Order Serving Reply and Motion to Dismiss. In its response, Duke asserts that the Affidavit of Randall F. Councilman clearly establishes that limbs cut by Duke and other debris left by Duke following the storm have been removed at Duke's expense and that no compensation for any other costs related to cleaning up the creek is warranted. Moreover, Duke argues that no matter what form of compensation Complainants seek (e.g., money, topsoil, landscaping, etc.), the Complaint is a claim for damages over which the Commission does not have jurisdiction.

DISCUSSION AND CONCLUSION

For purpose of reviewing this matter, the Commission has treated the filings of the Complainants as verified and has considered them along with the verified pleadings of Duke.

The Complainants originally requested monetary damages from Duke for harm allegedly caused to their property by Duke. While the Commission has a duty to enforce its rules and orders, it lacks any power to render a judgment for compensatory damages, which includes the payment of money. State ex rel. N.C. Corporation Commission v. Southern Railway, 147 N.C. 483, 61 S.E. 271 (1908). Accordingly, the Commission lacks subject matter jurisdiction over the Complainant's original claim for relief, and same was subject to dismissal.

The question then becomes whether the Complainants, through their amendment and subsequent pleadings, have asserted any other claim over which the Commission has jurisdiction. In their addendum to the original complaint, Complainants allege additional facts, but fail to alter their original claim for relief. However, read in the light most favorable to the Complainants, the addendum can be read as a request that Duke remove any equipment or debris left in the creek bordering their property. The record establishes that all such equipment or debris has been removed and, therefore, any such claim for relief is moot.

In its September 24, 2001 filing, Complainants offer their own interpretation of their addendum, and state that through it they are "asking that top soil be provided by Duke Power to restore our property to the condition prior to May 25, 2000." In recharacterizing their original claim for relief, Complainants have failed to transform it into a matter over which the Commission has jurisdiction. Whether Complainants seek money or goods in the form of top soil, at bottom they seek compensatory damages and the Commission lacks jurisdiction over such claims, regardless of the character of the damages sought. Accordingly, to the extent Complainants have sought compensatory damages in this proceeding, Duke's Motion to Dismiss should be, and is, allowed.

Having granted Duke's Motion to Dismiss, the Commission wants to be clear that Complainants are not without further recourse in an appropriate forum. While taking no position on the ultimate issue of whether anything Duke did or failed to do caused damage to Complainants' property, the Commission enters this Order with the knowledge that the Complainants have been informed, for some time, that they can pursue such claims in the General Court of Justice if they choose to do so.

Finally, reading the pleadings in the light most favorable to the Complainants, it is possible that they have complained that Duke has, in responding to the storm damage on May 25, 2000, violated a rule or regulation of the Commission. If this were the case, the Commission would have jurisdiction pursuant to N.C.G.S. § 62-73. However, having carefully reviewed all of the pleadings filed by the parties in this docket, the Commission concludes that no reasonable ground exists for a further investigation of such a complaint, and such complaint is dismissed.

Accordingly, after careful review of the extensive filings to date in this docket, the Commission is of the opinion that good cause exists to grant Duke's Motion to Dismiss the Complaint and the Amended Complaint for the reasons set forth above and to close this docket.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of March, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Rg031102.01

DOCKET NO. E-7, SUB 722

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Independent Investigation and Accounting Review) ORDER RULING ON
of Duke Power by Grant Thornton LLP on Behalf of) MOTIONS AND APPROVING
the North Carolina Utilities Commission and the) SETTLEMENT AGREEMENT
Public Service Commission of South Carolina)

BEFORE: Chair Jo Anne Sanford, and Commissioners J. Richard Conder, Robert V. Owens, Jr., Sam J. Ervin, IV, Lorinzo L. Joyner, James Y. Kerr, II, and Michael S. Wilkins

BY THE COMMISSION: By letter of August 3, 2001, the North Carolina Utilities Commission (hereinafter referred to as the Commission) advised Duke Power, a division of Duke Energy Corporation (Duke or Company) that the Commission had been informed of allegations of material accounting irregularities at Duke and notified Duke that the Commission had initiated an investigation pursuant to G.S. 62-34 and 62-37. The alleged irregularities were first brought to the attention of the Executive Director of the Public Service Commission of South Carolina (PSCSC) by an informant. Duke subsequently conducted an internal investigation and provided a written report to the Commission and the PSCSC on August 28, 2001.

On September 5, 2001, the Commission publicly announced that it had undertaken a joint investigation with the PSCSC and the North Carolina Public Staff regarding allegations of accounting irregularities at Duke. The Commission stated that the investigation, begun in July 2001, would continue in the form of an audit of Duke to be conducted by an independent firm. The Commission also announced that the independent auditor would be jointly selected by the Commission and the PSCSC and that the cost of the audit would be charged to Duke.

After soliciting proposals from independent consulting firms, the Commission and the PSCSC selected and signed a contract with the international accounting firm of Grant Thornton LLP to conduct the audit. The contract provided for an investigation that would center around an analysis of the Duke report and "will expand to include and/or encompass an evaluation of relevant accounting policies, procedures, entries, and other matters, as Contractor deems appropriate, in consultation with the State Commissions." Grant Thornton commenced its field work at the offices of Duke in Charlotte on January 16, 2002. During the course of its work, Grant Thornton reviewed more than 13,000 documents supplied by Duke and conducted 30 depositions of Duke employees and professional contractors employed by Duke.

GRANT THORNTON REPORT AND PROPOSED SETTLEMENT

The Commission and its Staff met with representatives from Grant Thornton and its counsel on October 8, 2002. At that meeting, Grant Thornton presented an overview of its findings, conclusions, and recommendations.

After the October 8 meeting, the two State Commissions authorized their Staffs to enter into settlement discussions with Duke. These settlement negotiations were attended by representatives of the Public Staff. Based on their settlement negotiations, the Staffs of the Commission and the PSCSC and Duke executed a proposed Settlement Agreement.

Grant Thornton filed its Report with the Commission and the PSCSC on October 22, 2002. In summary, the Overview section of the Report states:

> Grant Thornton's investigation has found that, in reaction to [a December 1998 decision in which the PSCSC reduced a utility's rates after the utility reported earnings over its allowed rate of return], a number of Duke mid to senior level managers met and developed a plan to identify expense and revenue items which could serve as a basis for accounting adjustments which could be made to "avoid reporting over-earnings to regulators" .... A focus of the plan was the identification and formulation of year-end 1998 entries which would minimize Duke's earned return as reported to the State Commissions, but would not impact or lower Duke Energy's consolidated earnings as reported to its investors or the Securities and Exchange Commission.
>
> Grant Thornton has identified a number of entries made by Duke in the course of Duke's dealing with its "allowed return problem", as it was characterized by some Duke managers. The entries identified included some of the fourteen entries pointed out by the whistleblower and addressed in the Duke Report, as well as other 1998 year-end entries, and some that affected the utility operating results for 1999 and 2000.
>
> Grant Thornton has identified entries, pre-income taxes (except for the RAR Tax Entry), totaling more than $64 million that inappropriately reduced Duke's 1998 pre-tax utility operating income as reported to the State Commissions. In addition, Grant Thornton noted entries, pre-income taxes, that inappropriately reduced Duke's reported pre-tax earned return by $23,958,348 for fiscal 1999 and $35,198,605 for fiscal 2000.

Grant Thornton found that some of the accounting entries that it investigated were appropriate, given applicable accounting principles. However, Grant Thornton found other entries to be inappropriate, and the Grant Thornton Report characterizes these inappropriate entries as either (a) completely without accounting justification under any accepted accounting standards; (b) in part inappropriate and without justification under any accepted accounting standards; (c) made subject to "aggressive interpretations" that were contrary to applicable accounting practices, industry practice, and Duke's past practice; or (d) made to take advantage of accounting errors with the purpose of enhancing Duke's earned return position. These inappropriate entries represented changes in Duke's prior accounting practices for similar transactions, and none of the changes were reported to either the Federal Energy Regulatory Commission or the State Commissions.

Duke filed a response to the Grant Thornton Report on October 22, 2002. On October 28, 2002, Grant Thornton filed a reply to the Duke response. In its reply, Grant Thornton stated that it had reviewed and analyzed the Duke response and that it stood by its Report and reaffirmed the findings and recommendations set forth therein.

The proposed Settlement Agreement was filed on October 22, 2002. By the proposed Settlement Agreement, Duke agreed:

1. To file for informational purposes, no later than December 1, 2002, certain regulatory reports and a reconciliation, for the years 1998, 1999, 2000 and 2001, to reflect the impact of the recommended entries set forth in the Grant Thornton Report;
2. To restore in fiscal year 2002 the nuclear insurance reserve account to a level it would have reached had Duke not changed its accounting for nuclear insurance distributions in 1998, an adjustment of $50 million;
3. To correct in 2002 an erroneous 1998 accounting entry in the amount of $1.75 million related to its Price Anderson Act nuclear liability reserve;
4. To make a one-time $25 million credit in 2002 to its deferred fuel accounts in North Carolina and South Carolina (North Carolina in the amount of $18.75 million and South Carolina in the amount of $6.25 million) to be incorporated into the next fuel cost proceedings in the respective states;
5. To implement all of the remedial actions set forth in the Duke report of August 28, 2001;
6. To "acknowledge and regret" that communications with the two State Commissions failed to adequately detail significant changes to prior accounting practices; and
7. To charge the cost of the Grant Thornton review to non-utility operations.

By a letter filed along with the proposed Settlement Agreement, the Commission Staff stated that the proposal would be presented to the Commission at the Commission Staff Conference of October 28, 2002.

COMMISSION STAFF CONFERENCE AND FILING OF MOTIONS

The Commission Staff placed the proposed Settlement Agreement on the agenda for the Commission Staff Conference which was held on Monday, October 28, 2002. The Staff recommended that the proposed Settlement Agreement be approved by the Commission. The agenda for this Commission Staff Conference and the Staff's recommendation were published and made public according to the Commission's usual practices on October 23 and 24, 2002.

On the morning of October 28, 2002, the Carolina Utility Customers Association, Inc. (CUCA), filed a Motion for Further Investigation and Hearing. By its motion, CUCA objected to the procedure being followed for consideration of the proposed Settlement Agreement and stated that the terms of the proposed Settlement Agreement are inadequate. CUCA asked the Commission to (1) deny the Staff's recommendation; (2) order a full audit of Duke Power for the period from January 1997 to date pursuant to G.S. 62-37(b), allow interested parties to intervene and participate, and determine an appropriate course of conduct after a hearing; and (3) refer the matter to the Mecklenburg County District Attorney for possible prosecution under G.S. 62-326(a).

The proposed Settlement Agreement was presented to the Commission as scheduled at the Commission Staff Conference of October 28, 2002. The Staff recommended that the Commission issue formal statements expressing appreciation to Grant Thornton, approving the proposed Settlement Agreement, and declaring the investigation closed. The Staff commended Grant Thornton for the diligent, comprehensive, and professional manner in which it had conducted this assignment. The Staff further stated that it had experienced an excellent working relationship with the PSCSC Staff during this investigation, and gave particular commendation to PSCSC Executive Director Gary E. Walsh. The Staff also commended Duke for its willingness to negotiate a full and fair resolution of this matter in order to move forward in a positive fashion without further controversy.

The Staff stated that it considered the proposed Settlement Agreement to be an appropriate and reasonable mechanism to resolve this matter positively and expeditiously without further controversy and in a manner which is fair to all interested parties, including customers served by Duke, the two State Commissions, and Duke. In that regard, the Staff stated that the proposed Settlement Agreement was negotiated by the State Commission Staffs in a manner designed to accomplish the following five primary objectives: (1) implement the Grant Thornton recommendations in an appropriate manner; (2) ensure the on-going integrity of the State Commissions' financial reporting requirements and process; (3) require Duke's shareholders, not customers, to bear the cost of the Grant Thornton audit; (4) ratify the jurisdiction of the State Commissions to determine the ultimate ratemaking treatment for all nuclear insurance distributions and reserve accruals held by Duke for the benefit of ratepayers in the Company's nuclear insurance reserve account; and (5) provide a direct monetary benefit to Duke customers through a $25 million offset in the Company's 2003 fuel charge adjustment proceedings in North Carolina and South Carolina.

The North Carolina Public Staff appeared at the Commission Staff Conference, stated that it fully supports the proposed Settlement Agreement, and recommended that the Commission approve the agreement.

James West, representing CUCA, appeared at the Commission Staff Conference and spoke in opposition to the recommendation and in support of CUCA's Motion for Further Investigation and Hearing. Wells Eddleman (Eddleman) appeared at the Commission Staff Conference and spoke in opposition to the recommendation. Barron Stone, the Duke accountant who first brought this matter to the attention of the Executive Director of the PSCSC, also spoke at the Commission Staff Conference.

After these presentations, the Commission adjourned until Tuesday, October 29, 2002, at which time the Commission resumed its Commission Staff Conference and ultimately voted to deny the motion for a hearing and to approve the proposed Settlement Agreement.

Following the votes of October 29, 2002, the Commission received certain e-mail and voicemail messages from Barron Stone, copies of which the Commission has caused to be filed herein as statements of position. The Commission also received certain e-mail messages from Eddleman which have been filed herein as statements of position.

On November 5, 2002, Eddleman filed a Response of Wells Eddleman, pro se, to the Commission's Denial of CUCA's 10-28-2002 Motion for Further Investigation and Hearing. Eddleman filed a corrected copy of this Response and an accompanying letter on November 12, 2002. By this Response, Eddleman offered further argument and moved for various types of relief, including requests for reconsideration of the denial of CUCA's motion for an investigation, reconsideration of the approval of the settlement, immediate full refunds of all funds inappropriately classified by Duke, an investigation by random sampling of Duke's affiliate transactions, a general rate case for Duke, an investigation of Duke's treatment of Barron Stone, and appointment of Barron Stone as head of Duke's regulatory accounting. By an attached statement, the Durham Food Co-op, People's Intergalactic Food Conspiracy No. 1, d/b/a Durham Co-op Grocery (Grocery), stated that it is a commercial customer of Duke and adopted the Eddleman Response and motions as its own.

On November 12, 2002, attorney Daniel F. Read filed a Notice of Appearance, Motion for Acceptance of Previously Filed Documents, Motion for Waiver of Filing Requirements, and Motion to Allow Electronic Filing, all dated November 8, 2002. Attorney Read stated that he was appearing on behalf of Eddleman and the Grocery. By these filings, attorney Read asked that the Commission to accept the filings made by Eddleman, to waive the requirement that filings be accompanied by 27 copies, and to allow electronic service of future filings. Eddleman renewed these motions by his filing of November 12, 2002.

Eddleman's filings of November 5 and 12, 2002, included a request for leave to intervene. The Grocery adopted all of Eddleman's requests as its own. CUCA filed a Petition to Intervene on November 27, 2002. On December 10, 2002, Duke filed a letter arguing that CUCA's petition to intervene should be either filed without response or denied. The Commission concludes that, as ratepayers, CUCA, Eddleman, and the Grocery are affected by the level of Duke's rates and have an interest in this matter. The petitions to intervene are allowed.

Finally, with the issuance of this order, the Commission has opened Docket E-7, Sub 722 for the filings in this matter. The filings relating to this investigation had previously been made in the general company docket maintained by the Commission Clerk for Duke, Docket E-7. For administrative convenience, the Commission Clerk has now opened the present docket and moved relevant filings to the present docket.

ATTEMPTED APPEALS OF CUCA AND EDDLEMAN

On November 27, 2002, CUCA filed Notice of Appeal and Exceptions, and on December 2, 2002, Eddleman filed notice of appeal and exceptions. Both CUCA and Eddleman attempt to appeal from the vote to accept the Settlement Agreement taken by the Commission on October 29.

Ordinarily, an appeal takes a case out of the jurisdiction of the tribunal from which appeal is taken and that tribunal is, pending appeal, *functus officio*. There are, however, exceptions to this rule. State ex rel. Utilities Commission v. Edmisten, 291 N.C. 361, 365 (1976). The Commission believes that the present case is an exception to this rule because at the time the November 27 Notice of Appeal was filed, no final order had been entered by the Commission to support an appeal. G.S. 62-90(a) provides that any party "may appeal from any final order or decision of the Commission within 30 days after the entry of such final order or decision..." Generally, an order is "entered" when it is reduced to writing, signed and filed with the clerk. G.S. 1A-1, Rule 58. Although this Rule does not apply to the Commission, it is the consistent practice of the Commission -- as all parties who practice regularly before the Commission know -- to take a public vote on the items on its Commission Staff Conference agenda and then to follow up on these votes by reducing the decisions to writing and filing the written orders with the Commission Clerk. These written orders set forth the Commission's reasoning and constitute the final order of the Commission for purposes of appeal.

The Commission followed its usual practice in this case. The present, written order in this case took some time to enter because the Settlement Agreement provides that it will be null and void if not approved by the Commission and the PSCSC, and the Commission was waiting for the PSCSC to act. The votes taken on October 29 did not constitute final orders or decisions subject to appeal. See Southern Furniture Hardware v. Branch Banking and Trust, 136 N.C.App. 695, 702 (2000). The present order constitutes the final order of the Commission in this matter, and it is this order that is subject to appeal pursuant to G.S. 62-90(a).

RULINGS ON MOTIONS AND PROPOSED SETTLEMENT

In broad terms, the pending motions raise two objections: they question the procedures being followed by the Commission to resolve this investigation, and they question the adequacy of the proposed Settlement Agreement. The Commission rejects both of these objections.

The Motion for Further Investigation and Hearing filed by CUCA is denied, as voted by the Commission on October 29, 2002. In its motion, CUCA relies upon G.S. 62-37(a). This statute provides that the Commission may, on its own motion and whenever it may be necessary, investigate a public utility and, in conducting such an investigation, may proceed either with or without a hearing as it may deem best, "but shall make no order without affording the parties affected thereby notice and hearing." CUCA argues that Commission approval of the Settlement Agreement will terminate the investigation without affording Duke ratepayers the notice and meaningful participation that are required by the statute. The Commission disagrees and concludes that it has complied with G.S. 62-37(a) as to both notice and hearing.

The Commission accorded reasonable notice to affected parties. Public notice of the agenda for the Commission Staff Conference was given on October 23 and 24, 2002, according to the Commission's usual practices for providing notice of its Commission Staff Conference agendas. Indeed, more than the usual notice was given for this item since Commission Staff filed a letter on October 22, 2002, advising that the matter would be on the agenda for October 28. The agenda of the Commission Staff Conference is the usual vehicle by which the Commission considers and decides procedural issues, including whether an evidentiary hearing ought to be held in a particular proceeding. The Commission believes that the adequacy of the notice required by G.S. 62-37(a) is a matter within the Commission's discretion. In this case, the Commission provided more notice than is usual for matters considered at the Commission Staff Conference, and no one has given any concrete reason as to why the notice was inadequate.

The Commission also accorded affected parties a hearing. The type of hearing required by G.S. 62-37(a) is not specified. The term "hearing" traditionally includes many types of proceedings. In the course of exercising its responsibilities, the Commission conducts numerous hearings every week, and these hearings follow different formats depending upon the nature of the statute or the issue involved. The present proceeding is a Commission investigation pursuant to G.S. 62-34 and G.S. 62-37. The Commission has seldom invoked these statutes to conduct an investigation of its own, and the Commission knows of no authority interpreting G.S. 62-37(a) in this context. The Commission clearly has a right under the statute to conduct an investigation without a hearing. The Commission has received and reviewed the results of the investigation contained in the Grant Thornton Report. The Commission is satisfied that the investigation was conducted in a thorough, complete and competent manner, and the Commission does not believe that G.S. 62-37(a) now requires an "audit of the audit," as argued by CUCA. The Commission believes that it has accorded parties the hearing required by G.S. 62-37(a) in the form of the Commission Staff Conference of October 28 and 29, 2002. This Commission Staff Conference was an open meeting where any member of the affected public could attend and participate. A specific invitation to speak was announced, and three people accepted that invitation. The Commission has fully considered all comments and arguments presented at the Commission Staff Conference. The Commission did not approve the Settlement Agreement – and indeed made no decision or order – until it voted on the record at the Commission Staff Conference.[1] By giving notice and conducting the Commission Staff Conference in the way that it did, the Commission has afforded all affected parties with the notice and hearing required by G.S. 62-37(a).

In denying the evidentiary hearing requested by CUCA, the Commission has carefully considered what, if any, benefits might be gained from waiting for additional investigations. The present investigation was initiated by the Commission, and it has been conducted in a manner that the Commission finds appropriate. The Commission defined the scope of the investigation and selected a qualified auditor to conduct it; a careful and extensive investigation and accounting review was conducted involving examination of 13,000 documents and 30 depositions; a detailed report has now been provided. An evidentiary hearing would amount to a new investigation, an "audit of the audit." CUCA's counsel agreed with this characterization of his proposal: "each intervenor who wished to do so would hire its own auditor. That auditor would then do one of two things. They would audit [the Commission's] auditor, and/or they would audit Duke independently..." CUCA essentially argues that the

[1] Although the Commission authorized negotiations with Duke, the negotiations were conducted by Commission Staff, not by the Commission itself. The Public Staff, representing the using and consuming public, was also a party to the negotiations. The Commission itself did not participate in the negotiations. The Commission was aware that the negotiations had led to a settlement and that the settlement involved a rate concession by Duke of some amount. However, the Commission made no decision as to approval of the settlement until the Settlement Agreement was presented to the Commission by its Staff and the vote was taken on October 29. Although one Commissioner made a statement at the Commission Staff Conference of October 28 indicating that he had previously argued, and lost, as to "where...the money should go and how much it should be...," the Commission did not make any decision or commitment, formal or informal, until the October 29 vote.

Commission should not be satisfied with the investigation it has undertaken, and should withhold its consideration of the proposed Settlement Agreement until some undefined number of private investigations are undertaken and completed. However, the Commission is in fact satisfied with its investigation and sees no reason to investigate these matters again or to investigate them differently. The Commission, in its discretion, does not believe that the public interest would be served by further private investigations or further delay in resolving these matters.

Turning to the objection to the adequacy of the proposed Settlement Agreement, the Commission is not persuaded by the arguments that were presented at Commission Staff Conference. CUCA argued that the settlement is inadequate and that a further hearing might lead to penalties, rate relief, or other remedies. The Commission rejects CUCA's arguments for the following reasons.

G.S. 62-310(a) provides for monetary penalties, recoverable in an action in Wake County Superior Court, of up to $1000 per day for each violation of a rule, order or regulation of the Commission. The Commission clearly could have pursued this course of action. However, the number of violations -- and thus the maximum amount of penalties -- that might be derived from the acts identified by Grant Thornton is unclear. This matter would undoubtedly have been contested and arguably could not have been calculated at the dollar level achieved by the Settlement Agreement. Moreover, penalties recovered pursuant to G.S. 62-310(a) go to the benefit of public schools (see G.S. 62-302(d), G.S. 115C-457.2, and G.S. 115C-457.3), not to the utility's ratepayers. The settlement provides direct rate benefits to Duke's customers through a credit in the upcoming fuel charge adjustment proceeding.

Beyond such penalties, it is not clear what, if any, rate relief could be ordered by the Commission in response to the accounting irregularities identified by Grant Thornton. The recently enacted "clean smokestacks" legislation specifically preserves the Commission's authority to take "any actions otherwise appropriate to enforce investor-owned public utility compliance with applicable statutes or Commission rules or to order any appropriate remedy for such noncompliance allowed by law." G.S. 62-133.6(h). However, it is still unclear what the Commission could actually do. First, it must be made clear that the accounting irregularities, to which Grant Thornton assigned a total value of $123.6 million, do not translate into a $123.6 million reduction in Duke's present rates. The procedures and formulas for setting utility rates, as well as the remedies for violations of statutes and Commission rules are set forth in G.S., Chapter 62, and they do not permit such a one-to-one reduction in rates. Second, it was argued at Commission Staff Conference that if a utility, even for one year, earns a return in excess of the rate of return approved in the utility's last general rate case, the utility's customers have a right to recover the "over-earnings."[1] The law does not support this argument. The law does not allow for such recovery of "over-earnings" by ratepayers, just as the law does not allow a utility to recover "under-earnings" from its ratepayers when the utility earns a return less than that approved by the Commission. Utility ratemaking is a prospective endeavor. Present customers may not be charged a rate higher than reasonable for present service in order to compensate the utility for a past deficit. By the same token, present utility rates may not be reduced to refund to

[1] The term "overearnings" is used here as a shorthand expression for "earning a return in excess of the rate of return approved by the Commission in the utility's last general rate case."

customers excessive earnings that occurred to the utility in the past. See Utilities Comm. v. Edmisten, 291 N.C. 451, 468-70 (1977). Finally, CUCA argued that Duke overcharged ratepayers "roughly a billion dollars" in the three-year period relevant to the investigation. CUCA itself characterized this as a "back of the envelope" estimate and gave little explanation for the number. The Commission rejects any speculation that ratepayers have paid a billion dollars more than they would have paid but for these irregularities identified by Grant Thornton.

CUCA also argued that a further hearing might lead to "policing" action to prevent future irregularities. The Commission believes that such action has already been accomplished. The Settlement Agreement addresses not only what happened in the past, but also what is expected in the future. The Settlement Agreement imposes appropriate remedies to address the irregularities identified by Grant Thornton and puts procedures in place to insure better communications in the future between Duke and the Commission and among Duke's own departments. Among other things, Duke has agreed to annual meetings with Commission Staff to discuss current operations, emerging accounting issues, and changes in accounting applications. Duke specifically acknowledges in the Settlement Agreement that it failed to adequately communicate with the Commission as to significant changes to prior accounting practices. Duke should have sought accounting orders from the Commission before making such adjustments, particularly as to the nuclear insurance and deferred executive compensation matters. The Commission fully expects that in the future Duke will make no changes of this significance or magnitude in its accounting practices without first obtaining explicit Commission approval.

CUCA argued that if Grant Thornton discovered irregularities in the few issues it examined, a broader review would likely uncover many more irregularities. Two responses are in order. First, the audit conducted by Grant Thornton was not as limited as supposed by CUCA. Staff stated that in addition to investigating fourteen issues that were originally identified by Duke in its August 28, 2001 report, Grant Thornton also

> conducted a comprehensive, forensic accounting investigation of Duke Power for the years 1998, 1999 and 2000 to determine whether the company made any other reclassification entries and/or accounting adjustments which...inappropriately reduced Duke Power's pre-tax utility operating income as reported to the State Commissions. And specifically, Grant Thornton placed particular emphasis on searching for accounting entries which had the result of shifting profitability from utility to non-utility operations during the years 1998 through 2000. Grant Thornton's investigation included, as a central element, an evaluation as to whether Duke Power's accounting entries complied with the...Federal Energy Regulatory Commission's uniform system of accounts, generally-accepted accounting principles applicable to regulated utilities, the industry practice, and Duke Power's own past practice.

Second, although the audit examined much more than fourteen issues, it is clear that the audit did not extend to examination of affiliate transactions, an area of inquiry urged by CUCA. Approval of the settlement does not prejudice any party as to issues outside the scope of the Grant Thornton investigation.

Finally, CUCA questioned the propriety of the Commission Staff's negotiations with Duke that led to the Settlement Agreement. Citing the statute against ex parte communications, CUCA argued that G.S. 62-70(g) embodies an "unambiguous statutory preference for the open resolution of rate-related matters on the record in a contested proceeding" and that the negotiations violated the spirit of this statute. Several responses are in order. First, G.S. 62-70(g) deals with "the level of rates specifically proposed to be charged by a public utility..." Thus, it appears from this language that the section addresses informal communications to the Commission regarding specific rate proposals made by a public utility. That is not the present situation. Second, as noted elsewhere herein, this was an investigation initiated by the Commission pursuant to G.S. 62-37(a). This was not an adversarial proceeding in a formal Commission docket. Thus, again, G.S. 62-70(g) does not apply to the present situation. Third, the Commission authorized negotiations with Duke, but the negotiations were conducted by Commission Staff, not by the Commission itself. As previously discussed, the Commission did not participate in the negotiations and made no decision until the Settlement Agreement was presented to the Commission at the Commission Staff Conference. The Commission finds no violation of the letter or spirit of G.S. 62-70(g).

The Commission has given careful and independent consideration to Duke's report of August 28, 2001, the Grant Thornton Report, Duke's response of October 22, 2002, the Settlement Agreement filed on October 22, 2002, the reply filed by Grant Thornton on October 28, 2002, and all comments and arguments presented at the Commission Staff Conference. Having done so, the Commission concludes that the Settlement Agreement accomplishes the five critical objectives identified by the Commission Staff in its agenda item and that good cause exists to approve the Settlement Agreement for the reasons set forth by the Commission Staff. The Commission is of the opinion that the Settlement Agreement represents a fair and adequate resolution of this matter and that approval of the Agreement is in the public interest. The Commission and the PSCSC undertook a full, fair, and thorough joint investigation and accounting review of Duke and retained a first-class, independent accounting firm to conduct the investigation and review. That process has been exhaustive and intensive. The investigation took 15 months and has consumed considerable time and resources of the Commission. The investigation is now complete, and the time has come to end the controversy. The proposed Settlement Agreement allows the Commission to resolve the investigation on terms that identify and correct the accounting irregularities, reinforce the obligations of the regulatory compact, provide some extra benefits to ratepayers, and serve the interests of regulatory efficiency. The Commission does not believe that a further hearing or investigation could lead to any greater benefits. A fair and timely resolution of this matter is in the best interests of Duke's customers, Duke's employees and shareholders, the public, and the regulatory process.[1]

[1] The Commission notes that the accounting irregularities identified by Grant Thornton involve the way in which Duke booked certain items for purposes of its regulated utility operations. Such irregularities impact the level of regulated taxable income reported to this Commission, but they would not impact the level of total Company taxable income and, therefore, would not impact the total State or federal tax liability of Duke. The body of taxpayers was not harmed by the accounting irregularities.

The relief sought by Eddleman and the Grocery in their Responses of November 5 and 12, 2002, is denied.[1] To the extent that Eddleman and the Grocery seek relief similar to CUCA, their motions are denied for the reasons stated above. To the extent Eddleman and the Grocery seek an investigation as to Duke's treatment of Barron Stone, the Commission will undertake no investigation since other more direct and appropriate remedies are available to Mr. Stone. The Commission has publicly thanked Mr. Stone for his courage and integrity in coming forward, and the Commission believes and expects that Duke will fairly discharge its employment obligations to him, but the Commission assumes no additional role in regard to this issue. As to the motion that the Commission order Duke to appoint Mr. Stone as head of regulatory accounting, the Commission has no authority to order Duke management to appoint any individual to a specific position at Duke. The motions to waive filing requirements for Eddleman are denied; however, the Commission has reduced the number of copies required in this proceeding to 20 copies. The motion to allow for electronic service of filings is denied; Commission Rules do not currently provide for electronic service of filings.

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The Commission expresses its gratitude and commendation to Grant Thornton for a job performed with great professionalism and distinction. Likewise, the Commission expresses its appreciation for the excellent work done by PSCSC Executive Director Gary E. Walsh and the North Carolina Public Staff throughout the course of this investigation. Finally, the Commission acknowledges our cooperative relationships with our colleagues on the PSCSC.

The Commission also acknowledges Duke's cooperation in the investigation and settlement process and appreciates Duke's desire to move forward in a positive fashion. However, this appreciation is tempered by the fact that Duke, and Duke alone, is responsible for creating the situation which led to the need for this investigation and accounting review. After careful evaluation of the conflicting opinions offered by Grant Thornton and Duke in their filings herein, the Commission agrees with the findings and conclusions of Grant Thornton. Grant Thornton found a concerted corporate effort at Duke to reduce the level of earnings to be reported to the Commission and the PSCSC. This effort by Duke was improper and it has harmed the trust inherent in the regulatory compact.

In the face of this conduct, the Commission must accomplish two things: we must correct the accounting irregularities and we must act to deter any similar conduct in the future. The Settlement Agreement orders remedial actions to address all of the irregularities identified by Grant Thornton and puts procedures in place to insure better communications between Duke and the Commission and among Duke's own departments. The Commission could have chosen to pursue monetary penalties under G.S. 62-310(a). However, other than the purely punitive effect of imposing a penalty, it is unlikely that such a course would have achieved a result as beneficial to ratepayers, or as costly to Duke, as the Settlement Agreement. The Settlement

[1] Although attorney Read filed written notice of appearance dated November 8 on behalf of both Eddleman and the Grocery, Eddleman sent an e-mail to the Commission on November 8 stating that he would continue to handle his case pro se. Attorney Read apparently intended to appear for Eddleman only during a brief time when Eddleman was unavailable, and Eddleman apparently wishes to appear pro se. Eddleman may represent himself, but he may not represent the Grocery. Commission Rule R1-22.

Agreement not only increases nuclear insurance reserves by $51.75 million (to be held for the benefit of ratepayers until Duke's next general rate cases) and provides direct and positive benefits that will be reflected in the rates paid by Duke customers next year, but also imposes a substantial cost on Duke that is probably greater than the total penalty that could have been ordered under G.S. 62-310(a). The Commission feels that lessons have been learned -- by both Duke and other utilities -- from this investigation, from the public airing of its findings, and from the terms of the Settlement Agreement. The Commission therefore concludes that it is in the best interest of all parties concerned, including ratepayers, to approve the Settlement Agreement and bring resolution to this matter.

IT IS, THEREFORE, ORDERED as follows:

1. That the petitions to intervene filed by CUCA, Eddleman and the Grocery are allowed;

2. That the Motion for Further Investigation and Hearing filed by CUCA and the motions filed by Eddleman and the Grocery, should be, and hereby are, denied;

3. That the Settlement Agreement attached to this Order as Appendix A should be, and hereby is, approved and Duke is ordered to comply therewith; and

4. That this investigation is closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of December , 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Rg121102.02

Commissioners Lorinzo L. Joyner and James Y. Kerr, II concur in the result.

Appendix A

Settlement Agreement

WHEREAS, on September 5, 2001, the North Carolina Utilities Commission (NCUC) and the Public Service Commission of South Carolina ("PSCSC") announced a joint investigation of July, 2001 allegations regarding accounting irregularities at Duke Power, a division of Duke Energy Corporation ("Duke");

WHEREAS, the NCUC and PSCSC ("Commissions") announced that their joint investigation would continue in the form of an audit ("accounting review") of Duke conducted by an independent firm;

WHEREAS, the NCUC and PSCSC solicited independent firms to conduct the accounting review by way of a request for proposals that set forth the general guidelines and scope in a document entitled "Scope of Independent Audit of Duke Power," the terms of which are incorporated herein by reference and hereafter referred to as "accounting review;"

WHEREAS, the NCUC and PSCSC received competitive bids from independent firms to conduct the accounting review and pursuant to this process selected the accounting firm, Grant Thornton, LLP, to conduct the accounting review;

WHEREAS, Grant Thornton, LLP has completed its accounting review and has issued its report ("the GT report") to the NCUC and PSCSC;

WHEREAS, Duke has submitted its response to Grant Thornton, LLP's report to the NCUC and PSCSC; and

WHEREAS, the Staffs of the NCUC and PSCSC ("Commission Staffs") and Duke (hereafter referred to collectively as "the parties") desire to formally and positively resolve all matters within the scope of the accounting review without further controversy.

NOW, THEREFORE, the parties agree as follows:

1. The Commissions received Duke's August 28, 2001 report, the GT report filed October 22, 2002 and Duke's response filed October 22, 2002. The Commission Staffs believe that Duke's August 28, 2001 report addressed the matters within the scope of the Commissions' request at that time and that the accounting errors and issues described by Duke in its report were fully reviewed by Grant Thornton. The parties recognize that Duke and Grant Thornton are in agreement on certain issues; however, with regard to the accounting treatment for nuclear insurance distributions and certain other accounting issues addressed in the accounting review, the GT report and Duke disagree based upon assertions of differing professional opinions. Therefore, in order to conclude the accounting review process and to resolve and settle all matters resulting from and within the scope of the accounting review, the parties agree to the terms of this Settlement Agreement. It is expressly understood and agreed that the acceptance of the terms

and conditions of this Agreement is in full accord and satisfaction of and in compromise of a disputed matter, and that the execution of this Agreement by the Commission Staffs and Duke is not an admission with respect to any matters resulting from and within the scope of the accounting review, but made for the purpose of terminating a dispute.

2. Duke agrees that it will, no later than December 1, 2002, file for informational purposes the following state regulatory reports and a reconciliation, for the years 1998, 1999, 2000 and 2001, to reflect the impact of the recommended entries set forth in the GT report:

   - NCUC Quarterly ES-1 reports
   - PSCSC Quarterly reports
   - State specific pages of FERC Form 1 reports

3. The parties agree to financial and accounting terms that will generally require Duke: to restore in fiscal year 2002 the nuclear insurance reserve account to a level it would have reached had Duke not changed its accounting for nuclear insurance distributions in 1998; to correct in 2002 an erroneous 1998 accounting entry related to its Price Anderson Act nuclear liability reserve; and to make a one-time $25 million credit in 2002 to its deferred fuel accounts for the current benefit of North and South Carolina customers. These terms are more particularly described below:

   a. Duke agrees to credit the nuclear insurance distributions it received in 2001, in the amount of approximately $33.45 million, to Account 228.1 – Accumulated Provision for Property Insurance, an operating reserve account. Duke further agrees to credit $16.55 million of the nuclear insurance distributions from the amount of approximately $24.5 million which the company received in 2002, to Account 228.1, with the remaining amount of approximately $7.95 million to be recorded as a credit to Account 924 – Property Insurance. The NML portion of nuclear insurance distributions received by Duke in 2003 and subsequent years shall be credited to Account 228.1 and the remainder of any such distributions shall be credited to Account 924. All monies credited to Account 228.1 – Accumulated Provision for Property Insurance, an operating reserve account, shall be held for the benefit of ratepayers until the Company's next general rate cases in North and South Carolina, at which time the NCUC and PSCSC shall review the status and sufficiency of the account and shall determine the appropriate jurisdictional ratemaking treatment of all such funds, including all amounts then credited to Account 228.1.

   b. Duke agrees to credit the amount of $1.75 million to Account 228.1 – Accumulated Provision for Property Insurance, an operating reserve account, and agrees to debit Account 421 – Miscellaneous Nonoperating

Income (a below the line account) in order to remedy an incorrect 1998 accounting entry related to the Price Anderson Act.

c. Duke agrees to implement all of the remedial actions set forth by the Company in Paragraphs IV.b – IV.e of its August 28, 2001 Report to the NCUC and PSCSC.

d. Duke acknowledges and regrets that communications with the Commissions failed to adequately detail significant changes to prior accounting practices. In order to achieve full and complete resolution of all issues, whether disputed or agreed, within the scope of the accounting review, Duke agrees to record a one-time credit of $25 million to the deferred fuel accounts, Account 232.03 – Unbilled Fuel Revenues (North Carolina) in the amount of $18.75 million and Account 232.08 – Unbilled Fuel Revenues (South Carolina) in the amount of $6.25 million, for the benefit of North and South Carolina customers. These amounts will be incorporated into the next fuel clause proceedings in the respective states as an offset to fuel costs for the 12-month period established in the proceedings.

4. Duke agrees that the cost of Grant Thornton, LLP's (and its contractors') professional fees and expenses for the accounting review will be charged to its non-utility operations.

5. Having reached resolution of this matter, it is the intention of the parties to move forward in a positive fashion without further controversy.

6. The parties recommend that the Commissions approve the terms of this Settlement Agreement.

7. This Settlement Agreement shall be submitted for approval to the NCUC on October 28, 2002, and to the PSCSC on October 29, 2002. Each party reserves the right to withdraw this Settlement Agreement at any time prior to its approval. If the Settlement Agreement is not approved, or if it is modified or withdrawn, it is null and void by its terms and shall not be admissible in any subsequent proceeding.

This Settlement Agreement is final and conclusive.

DUKE ENERGY CORPORATION

By: \s\ Ellen T. Ruff
Ellen T. Ruff

Effective Date: October 22, 2002

Its: Senior Vice President Asset Management

NORTH CAROLINA UTILITIES
COMMISSION STAFF

By: \s\ Robert H. Bennink, Jr.
Robert H. Bennink, Jr.

Effective Date: October 22, 2002

Its: General Counsel

PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA STAFF

By: \s\ Gary E. Walsh
Gary E. Walsh

Effective Date: October 22, 2002

Its: Executive Director

DOCKET NO. E-7, SUB 722

COMMISSIONERS JOYNER AND KERR, concurring in the result.

We want to emphasize that we join in the majority's decision to accept the Settlement Agreement, and we agree completely with the majority's reasoning in support of that decision. We also concur with the majority's decision to deny the motions filed by CUCA, Eddleman and the Grocery, but we simply reach that decision by a different path. We write this concurring opinion to set forth our reasoning for denying those motions.

This is a Commission investigation under G.S. 62-37(a). As such, it is a unique proceeding. No one at the Commission can recall a similar instance where the Commission has exercised its investigative authority under this statute. A review of reported Commission orders and appellate decisions provides no guidance. G.S. 62-37(a) is contained in Article 3 of Chapter 62 of the General Statutes. This is the article that defines the various powers and duties of the Commission. It is not in Article 4, which deals with procedure. The first statute in Article 4 states that "[f]or the purpose of conducting hearings, making decisions and issuing orders, and in formal investigations where a record is made of testimony under oath, the Commission shall be deemed to exercise functions judicial in nature...." Article 4 goes on to define various procedural requirements that the Commission must follow when acting as a "court of record" or in "formal hearings" or "contested proceedings."

A G.S. 62-37(a) investigation is not an exercise of the Commission's judicial function. G.S. 62-37(a) allows the Commission to proceed "either with or without a hearing as it may deem best..." The Commission could conduct an investigation, find nothing wrong, and simply end the matter. In other investigations, such as this one, some order is appropriate. G.S. 62-37(a) provides that the Commission "shall make no order without affording the parties affected thereby notice and hearing." CUCA, Eddleman, and the Grocery rely upon this language. The majority essentially equates "the parties affected" with persons "having an interest," and allows CUCA, Eddleman, and the Grocery to intervene because they represent Duke ratepayers or are Duke ratepayers themselves. The majority applies the same, very liberal view of intervention that the Commission follows in its other proceedings. While we adhere to that view ourselves for purposes of intervention in those other types of Commission proceedings, we do not think that it is required in a G.S. 62-37(a) investigation under Article 3.

We think that when acting pursuant to G.S. 62-37(a), the Commission has broad discretion to define the "parties affected" and to prescribe the kind of "hearing" that must precede issuance of an order. The conclusions reached by the Commission on both of these matters will necessarily depend upon the unique facts and circumstances of the case. The subject of the investigation in the instant case was whether Duke had violated Commission rules or accounting practices in the way in which it reported its regulated income to the Commission. The injury was to the authority of the Commission, not to any individual ratepayer. We think that the only party "affected" in this proceeding is Duke, the utility being investigated. Therefore, only Duke is entitled to the notice and hearing required by G.S. 62-37(a), and only Duke has standing to complain about the adequacy of the notice and hearing afforded. We do not object to the Commission's allowing others an opportunity to be heard at the Staff

Conference. However, in doing so, we think that the Commission afforded those persons greater participation than is required by G.S. 62-37(a). We would deny the motions of CUCA, Eddleman, and the Grocery on the grounds that they were not "parties affected" and thus lacked standing.

\s\ Lorinzo L. Joyner
Commissioner Lorinzo L. Joyner

\s\ James Y. Kerr, II
Commissioner James Y. Kerr, II

NATURAL GAS - MERGER

DOCKET NO. G-9, SUB 466
DOCKET NO. G-3, SUB 251

In the Matter of)
Joint Application of NUI Utilities, Inc. (NUI) and)
Piedmont Natural Gas Company, Inc. (Piedmont))
for (1) the Approval of an Asset Purchase)
Agreement Pursuant to which Piedmont Will)
Acquire Substantially All of the Assets Employed)
by NUI in the Operation of Its North Carolina Gas)
Service Division, (2) Authority to Transfer to)
Piedmont All of NUI's Rights and Obligations) ORDER APPROVING PETITION
Under Its Certificates of Public Convenience and)
Necessity Authorizing It to Provide Natural Gas)
Service in North Carolina, (3) Abandonment of Gas)
Service in North Carolina by NUI upon the Transfer)
of the Assets and Certificates, and (4) Authorization)
for Piedmont to Make Changes in Its Policies and)
Procedures, including Its Gas Cost Recovery)
Mechanism, that are Necessary or Appropriate to)
Effect the Acquisition.)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 26, 2002.

BEFORE: Commissioner Lorinzo L. Joyner, Presiding; Chair Jo Anne Sanford; Commissioner J. Richard Conder; Commissioner Robert V. Owens, Jr.; and Commissioner Michael S. Wilkins.

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Nelson Mullins Riley & Scarborough, L.L.P., Bank of America Corporate Center, 100 N. Tryon Street, Suite 3350, Charlotte, North Carolina 28202-4000.

For NUI Utilities, Inc.:

James H. Jeffries IV, Nelson Mullins Riley & Scarborough, L.L.P., Bank of America Corporate Center, 100 N. Tryon Street, Suite 3350, Charlotte, North Carolina 28202-4000.

For Carolina Utility Customers Association, Inc.:

James West, West Law Offices, P.C., Suite 1735, 434 Fayetteville Street Mall,
Raleigh, North Carolina 27601

For the Using and Consuming Public:

Jimmie Little, Staff Attorney, Public Staff – North Carolina Utilities Commission,
Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the Using and Consuming Public:

Leonard G. Green, Assistant Attorney General, North Carolina Department of
Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On May 31, 2002, Piedmont Natural Gas Company, Inc. (Piedmont), and NUI Utilities, Inc., d/b/a NUI North Carolina Gas (NUI) (Piedmont and NUI are hereinafter collectively referred to as the Applicants), filed a Petition seeking (1) approval of an Asset Purchase Agreement between Piedmont and NUI dated May 14, 2002, pursuant to which Piedmont will acquire substantially all of the assets of NUI employed in its North Carolina operations, (2) authorization to transfer to Piedmont all of NUI's rights and obligations under all certificates of public convenience and necessity heretofore issued by the Utilities Commission to NUI and/or its predecessors, (3) authorization for Piedmont to commence natural gas service in all areas of North Carolina previously certificated to NUI under the terms and conditions of service, including rates, approved for NUI, (4) authorization for NUI to discontinue natural gas service in North Carolina upon the effective date of the acquisition by Piedmont of the assets employed by NUI in its NUI North Carolina Gas division pursuant to the Asset Purchase Agreement, (5) authorization for Piedmont to make appropriate changes in its policies and procedures, including its Gas Cost Recovery Mechanism, that are necessary or appropriate, and (6) authorization for Piedmont to apply its Commission approved depreciation rates to the depreciable assets being purchased by Piedmont. Exhibits supporting the Petition, including a market power study and cost-benefit analysis, as well as the prefiled direct testimony of witness David J. Dzuricky, were also filed by the Applicants on May 31, 2002.

On June 24, 2002, Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene. On that same day, CUCA challenged the proposed procedural schedule for this docket and requested additional time for discovery and the filing of intervenor testimony.

On June 26, 2002, the Applicants filed a response to CUCA's request to alter the proposed procedural schedule and on June 27, 2002, the Commission issued its Order Scheduling Hearing, Establishing Procedural Deadlines, Requiring Public Notice, and Granting Petition to Intervene. This Order established a hearing date of August 26, 2002, set forth discovery procedures, set dates for Intervenor testimony and rebuttal testimony, required the Applicants to give notice to their customers of the hearing on this matter, allowed CUCA's prior Motion to Intervene, and established the filing date for briefs and proposed orders.

On July 18, 2002, the Attorney General filed its Notice of Intervention in this Docket pursuant to G.S. 62-20.

The Commission received and reviewed various pleadings regarding discovery during the pendency of this case and on July 18, 2002, issued its Order Overruling Objections and Allowing Motion to Compel.

The direct testimony and exhibits of Public Staff witnesses Jeffrey L. Davis and James G. Hoard were filed on August 5, 2002. This testimony generally supported the relief sought by the Applicants. The only substantive concern with the transaction expressed by the Public Staff witnesses involved the treatment of any potential acquisition adjustment that might be sought with respect to the proposed transaction.

The Applicants' witness Dzuricky prefiled rebuttal testimony on August 19, 2002, in order to address issues raised in the prefiled direct testimony of Public Staff witnesses Davis and Hoard.

No other party filed testimony.

On August 26, 2002, the matter came on for hearing as scheduled in Raleigh. No public witnesses appeared. The prefiled testimony and exhibits of the following witnesses were received into evidence;

For the Applicants: David J. Dzuricky, Chief Financial Officer and Senior Vice President of Piedmont Natural Gas Company, Inc.

For the Public Staff: Jeffrey L. Davis, Director, Natural Gas Division, and James G. Hoard, Assistant Director, Accounting Division.

Based on the testimony and exhibits received into evidence, the record in this proceeding, and the Commission's records in general, the Commission makes the following:

FINDINGS OF FACT

1. Piedmont is a corporation organized and existing under the laws of the State of North Carolina.

2. Piedmont is authorized by its Articles of Incorporation to engage in and is presently engaged in the business of transporting, distributing and selling natural gas to approximately 440,000 customers in North Carolina, including portions of Stokes County, pursuant to certificates of public convenience and necessity previously granted by this Commission.

3. Piedmont is a public utility within the meaning of G.S. 62-3(23) and its North Carolina operations are subject to the jurisdiction of this Commission.

4. NUI North Carolina Gas is an operating division of NUI Utilities, Inc., a corporation organized under the laws of the state of New Jersey and duly registered to do business in North Carolina.

5. NUI is authorized to and is presently engaged in the business of transporting, distributing, and selling natural gas to approximately 14,000 customers in a franchised area which consists of all of Rockingham County and part of Stokes County in the northern Piedmont region of North Carolina.

6. NUI is a public utility within the meaning of G.S. 62-3(23) and its North Carolina operations are subject to the jurisdiction of this Commission.

7. Applicants' testimony, exhibits, affidavits of publication and published hearing notices are in compliance with the provisions of the North Carolina General Statutes and the Rules and Regulations of this Commission.

8. Applicants are lawfully before the Commission pursuant to G.S. 62-110, 62-111, and 62-118 with respect to the relief sought in their Petition.

9. Applicants seek (a) approval of an Asset Purchase Agreement between Piedmont and NUI dated May 14, 2002, pursuant to which Piedmont will acquire substantially all of the assets of NUI employed in its North Carolina operations, (b) authorization to transfer to Piedmont all of NUI's rights and obligations under all certificates of public convenience and necessity heretofore issued by the Utilities Commission to NUI and/or its predecessors, (c) authorization for Piedmont to commence natural gas service in all areas of North Carolina previously certificated to NUI under the terms and conditions of service, including rates, approved for NUI, (d) authorization for NUI to discontinue natural gas service in North Carolina upon the effective date of the acquisition by Piedmont of the assets employed by NUI in its NUI North Carolina Gas division pursuant to the Asset Purchase Agreement, (e) authorization for Piedmont to make appropriate changes in its policies and procedures, including its Gas Cost Recovery Mechanism, that are necessary or appropriate to effectuate the proposed acquisition, and (f) authorization for Piedmont to apply its Commission approved depreciation rates to the depreciable assets being purchased by Piedmont from NUI.

10. In order for Applicants to obtain Commission approval of the acquisition by Piedmont of substantially all of NUI's North Carolina operations and assets, and the associated relief sought in the Petition, Applicants must demonstrate that the proposed transaction between Piedmont and NUI is justified by the public convenience and necessity.

11. NUI is a multi-state public utility with regulated natural gas distribution or related operations in the states of New Jersey, Maryland, Pennsylvania, New York, Florida, Virginia and North Carolina. In addition to these regulated operations, NUI also operates a number of unregulated businesses on a multi-state basis including those engaged in energy brokering, sales outsourcing, and business and environmental services. NUI's North Carolina distribution operations comprise approximately four percent of its overall regulated operations. NUI is headquartered in Union, New Jersey.

12. Piedmont is a multi-state public utility with regulated natural gas distribution operations in the states of North Carolina, South Carolina, and Tennessee. Piedmont, through affiliated entities, is also engaged in a number of businesses related to natural gas distribution which are either unregulated or are regulated by the Federal Energy Regulatory Commission. Piedmont's North Carolina jurisdictional operations constitute the largest part of its regulated business. Piedmont is headquartered in Charlotte, North Carolina.

13. Upon the closing of the transaction set forth in the Agreement, Piedmont will acquire ownership of and operational control over substantially all of NUI's jurisdictional assets used to provide service to North Carolina customers.

14. Piedmont is an experienced and capable natural gas local distribution company that is prepared to assume the certificate and service obligations of NUI.

15. Piedmont's operational and service presence in North Carolina is substantially larger than that of NUI.

16. Upon consummation of the transaction contemplated by the Agreement, Piedmont's larger operational and service presence in North Carolina will benefit existing NUI customers and new customers in NUI's existing service territory.

17. Piedmont's natural gas supply and capacity portfolio available to serve its North Carolina customers is substantially larger than that available to NUI.

18. Upon consummation of the transaction contemplated by the Agreement, Piedmont's larger natural gas supply and capacity portfolio will benefit existing NUI customers and new customers in NUI's existing service territory.

19. Piedmont's North Carolina customer base is substantially larger than that of NUI.

20. Upon consummation of the transaction contemplated by the Agreement, Piedmont's larger customer base will benefit existing NUI customers and new customers in NUI's existing service territory.

21. Piedmont's acquisition of NUI's North Carolina operations will provide net benefits to Piedmont and its ratepayers.

22. Piedmont's acquisition of NUI's North Carolina operations will provide net benefits to NUI's existing customers and to new customers within NUI's existing service territory.

23. The benefits demonstrated by Piedmont outweigh the potential harms and risks associated with the proposed acquisition.

24. Piedmont's acquisition of NUI's North Carolina operations will serve several public interests and Commission goals.

25. Piedmont's acquisition of NUI's North Carolina operations will not serve to materially increase Piedmont's market power or act to reduce competition within North Carolina.

26. Piedmont's acquisition of NUI's North Carolina operations, as set forth in the Agreement, is consistent with the public interest and justified by the public convenience and necessity.

27. The additional relief sought by Piedmont and NUI in the Petition is necessary and appropriate for consummation of the transaction set forth in the Agreement.

28. Upon consummation of the transaction contemplated by the Agreement, Piedmont shall charge NUI's approved rates for service to NUI's existing customers and Piedmont's approved rates for service to new customers within NUI's existing service area.

29. Upon consummation of the transaction contemplated by the Agreement, Piedmont shall propose and file with the Commission a plan to transition NUI's existing customers to Piedmont's rate structure over the course of not less than a year.

30. There is a $2.4 million adjustment carried on NUI's books associated with NUI's acquisition of the assets and operations of Pennsylvania & Southern Gas Company in 1993. Piedmont shall not be permitted to recover from ratepayers the acquisition adjustment carried on NUI's books related to its acquisition of Pennsylvania & Southern Gas Company.

31. The estimated acquisition premium for the present proposed transaction is $4.3 million. NUI is not a financially troubled public utility and there are no operational or managerial problems currently affecting the system. Piedmont is obligated to purchase the NUI assets whether the cost of this acquisition premium is recovered from ratepayers or not. Piedmont shall not be permitted to recover from ratepayers the cost of the $4.3 million acquisition premium.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-7

These findings are jurisdictional, informational and/or procedural in nature and are not contested by any party. They are supported by the Petition, the testimony and exhibits of the various witnesses, the records of the Commission in this and other proceedings, and the Affidavits of Publication filed with the Commission in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-9

The nature of the authorization sought by Applicants in this docket is undisputed and is set forth in the Petition and the exhibits attached thereto as well as the testimony and exhibits of the Applicants' witness Dzuricky.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The basis for this finding is found in G.S. 62-111(a) which provides that "[n]o franchise now existing or hereafter issued under the provisions of this Chapter . . . shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise . . . , nor shall any merger or combination affecting any public utility be made through acquisition of control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity." The Applicants' Petition indicates that they seek, among other things, approval of the Asset Purchase Agreement pursuant to which Piedmont will acquire all of the North Carolina assets, operations and certificate authority of NUI with respect to NUI's North Carolina operations.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11-12

The evidence for these findings is found in the Petition and, in particular, Exhibits A and B thereto. Specifically, the Petition provides that "Piedmont . . . is engaged in the business of transporting, distributing, and selling gas in the States of North Carolina, South Carolina and Tennessee." Exhibit A to the Petition recites that NUI Corporation "is engaged in the sale and distribution of natural gas, energy commodity trading and marketing, sales outsourcing, and telecommunications" and that its local distribution operations provide service to customers in seven states. Exhibit B to the Petition indicates the scope of Piedmont's regulated utility operations in North Carolina, South Carolina and Tennessee, as well as the extent of its non-regulated energy related operations. These findings are also supported by the testimony of Public Staff witnesses Hoard and Davis and the Applicants' witness Dzuricky, as well as the Commission's records. These findings are essentially informational in nature and are undisputed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding is set forth in the Petition, the Agreement, in the testimony of the Applicants' witness Dzuricky and Public Staff witnesses Davis and Hoard and is undisputed.

The Petition recites that "Under the terms of the Asset Purchase Agreement, Piedmont will acquire substantially all of the assets employed, and assume substantially all of the obligations incurred by NUI in connection with the natural gas distribution business of NCG. As a result, upon the effective date of the Acquisition, Piedmont will become responsible for providing natural gas service to all natural gas customers in the North Carolina service area previously certificated to NUI and its predecessors." The Agreement, attached as Exhibit C to the Petition, sets forth the legal terms establishing this obligation. The scope of the proposed acquisition is further explained in the testimony of the Applicants' and the Public Staff's witnesses.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence supporting this finding is found in the Petition, in the testimony of the Applicants' witness Dzuricky and Public Staff witnesses Davis and Hoard, and in the Commission's records.

In the Petition, the Applicants indicate that "Piedmont is an experienced and capable natural gas local distribution company [that has] previously shown that it is ready, willing and able to assume all of the regulatory responsibilities imposed upon natural gas utilities by the North Carolina General Statutes and by the rules and regulations of the Commission with respect to its existing utility operations in North Carolina . . . [and] with respect to the NCG operations." The Applicants' witness Dzuricky repeats this assertion almost verbatim in his direct testimony and further indicates that Piedmont has been providing natural gas service in North Carolina for more than 50 years. Public Staff witnesses Davis and Hoard testified that Piedmont is an established North Carolina LDC that is the largest in the State and the second largest in the South and that it has an "exemplary safety and maintenance record and experience."

The assertions of the Public Staff and the Applicants on this finding are undisputed.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-16

The evidence for these findings is found in the Petition, the exhibits thereto, and in the testimony of the witnesses for the Public Staff and the Applicants.

In the Petition, the Applicants indicate that Piedmont serves approximately 440,000 customers in North Carolina compared to approximately 14,000 customers for NUI. Similarly, Piedmont employs approximately 1,100 people in North Carolina; NUI employs only 48. According to the Petition, annual throughput for NUI in North Carolina is approximately 4.1 million dekatherms compared to 71.5 million dekatherms for Piedmont. These figures are directly supported by the testimony of the Applicants' witness Dzuricky. Further, the testimony of Public Staff witnesses Davis and Hoard support the large disparity in the relative size of Piedmont's and NUI's North Carolina operations by observing that NUI's North Carolina operations will represent only about a three percent increase in Piedmont's customers and about a five percent increase in Piedmont's annual throughput.

In the Petition the Applicants also assert that Piedmont's larger operations in North Carolina will benefit NUI's existing customers (and new customers within NUI's existing service territory) following consummation of the acquisition of NUI's operations because Piedmont will have a greater depth of assets, services and personnel to call upon to ensure safe, flexible and reliable service to customers within NUI's service territory. This assertion is supported by the direct testimony of the Applicants' witness Dzuricky, who indicated that "Piedmont will be able to call upon [its] larger base of employees to provide additional services to the area currently served by NCG in North Carolina. If an emergency were to arise, Piedmont would be able to deploy more local resources on behalf of NCG's customers."

These assertions are undisputed and no other party submitted testimony or evidence thereon.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 17-18

The evidence for these findings is contained in the Petition and the testimony of Public Staff witnesses Davis and Hoard and Applicants' witness Dzuricky.

In the Petition, Applicants indicate that Piedmont's approximate annual throughput in North Carolina is 71.5 million dekatherms while NUI's North Carolina annual throughput is only 4.1 million dekatherms. The Commission notes that this constitutes an approximate ratio of 17 to 1. These assertions are directly supported in the direct testimony of witness Dzuricky. They are further supported by the market power analysis prepared by Dr. Lukens, attached to the Petition as Exhibit D, which indicates that Piedmont has firm capacity contracts for 470,000 dts/day and storage contracts for 11 million dts/d compared to NUI's firm capacity of 12,000 dts/day and 139,000 dts/day of storage. Similarly, Public Staff witnesses Davis and Hoard indicate that Piedmont's absorption of NUI's North Carolina operations would only increase Piedmont's annual throughput by approximately five percent.

The Petition further indicates that Piedmont obtains its annual throughput from a variety of sources, "including various peaking and storage services" and that "[a]ccess to these additional supplies should provide greater flexibility and reliability to the area currently served by NUI in North Carolina." The testimony of the Applicants' witness Dzuricky directly supports this contention.

The testimony on this subject by the Applicants and the Public Staff is uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 19-20

The evidence for these findings is contained in the Petition and in the testimony of the Applicants' witness Dzuricky.

In the Petition, the Applicants indicate that Piedmont serves approximately 440,000 customers in North Carolina compared to approximately 14,000 customers served by NUI. These figures are confirmed in the direct prefiled testimony of the Applicants' witness Dzuricky.

The Petition also indicates that the larger number of customers served by Piedmont will provide a benefit to existing and new customers in NUI's service area after consummation of the acquisition of NUI's North Carolina operations by Piedmont. Specifically, the Petition states, "In recent years, the area served by NUI in North Carolina has experienced the loss of several large industrial customers and the risks of further loss of such customers exists either as a result of further plant closings or the switching from natural gas to other fuels. Should such events occur, residential and other small customers would be placed at risk of substantial increases in rates. Piedmont has a much larger base of customers in North Carolina over whom to spread this risk, greatly reducing the risk to any individual customer." This assertion is also set forth in the testimony of the Applicants' witness Dzuricky and in the cost benefit analysis attached to the Petition.

The evidence presented by the Applicants on these issues is uncontested. No other party submitted testimony or evidence on these issues.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence for this finding is found in the testimony of the Applicants' witness Dzuricky.

In his direct prefiled testimony, witness Dzuricky testified that the addition of approximately 14,000 new customers to Piedmont's system would serve Piedmont's commitment to growth in North Carolina and would benefit Piedmont and its ratepayers through the cost-effective addition of a substantial number of new customers. Witness Dzuricky specifically testified that this growth would tend to (a) improve Piedmont's access to capital markets, (b) increase its ability to employ qualified employees, and (c) generate new opportunities for cost savings through the integration of NUI's operations and the spreading of fixed costs over a greater number of customers. Upon cross-examination, witness Dzuricky affirmed each of these benefits to Piedmont and its ratepayers resulting from the proposed acquisition. While these benefits were not quantified, the Commission has no reason to doubt that cost-effective growth into an adjacent area would be a benefit to Piedmont for the reasons set forth by witness Dzuricky. The Applicants' testimony on this issue is undisputed and no other party submitted testimony or evidence thereon.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The primary evidence for this finding is set forth in the cost benefit analysis attached as Exhibit E to the Petition.

That analysis lists a number of projected benefits to NUI's existing customers and to new customers within NUI's existing service territory if the acquisition is consummated. These include (a) a $1.2 million annual savings from the elimination of interdepartmental charges currently assessed to NUI's North Carolina operations; (b) annual property insurance savings of $42,976; (c) lower gas prices resulting from the historically lower per therm cost of gas of Piedmont; (d) a $23,000 annual savings from elimination of interdepartmental interest charges; and (e) larger potential recovery of secondary market contributions as a result of Piedmont's larger gas supply portfolio. The cost benefit analysis also lists a number of recurring and non-recurring costs associated with the transaction, the most substantial of which is a potential acquisition adjustment of $4.3 million. In examining the results of this cost benefit analysis, the Commission has excluded this acquisition adjustment from its considerations for the reasons discussed below. The record also indicates that some customers would receive a rate increase if immediately converted to Piedmont's rates. This appears to be the result of the relative differences in cost allocation and rate design used to design the existing rates for each company. As is discussed below, Piedmont does not propose to convert current NUI customers to Piedmont's rates in the near term and will do so only upon receiving Commission approval.

Based on the foregoing, the Commission finds that the cost benefit analysis submitted by the Applicants demonstrates a net benefit to NUI's customers and new customers within NUI's existing service area as a result of the acquisition. This conclusion is supported by the undisputed cross-examination testimony of witness Dzuricky who indicated that, even in year one of the acquisition, the net benefits of this transaction will be evident from an accounting perspective.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

The evidence for this finding is identified and discussed in the previous sections of this Order addressing the evidence supporting Findings Nos. 14 through 22.

Piedmont and the Public Staff have identified discrete and definable benefits that will accrue to Piedmont, its ratepayers, NUI's ratepayers and new customers within NUI's service area following consummation of the proposed acquisition. In some cases, these benefits are quantifiable and in some cases they are not. No party other than Piedmont has submitted evidence of any costs or material detriments associated with the transaction. Piedmont's evidence demonstrates that the acquisition will provide a net benefit to all parties involved. On cross-examination of the Applicants' witness Dzuricky, CUCA elicited testimony regarding some potential rate increases to certain customers that may result from the transaction. The Commission has considered this aspect of the acquisition and concludes (a) that these rate increases are somewhat speculative at this point, given the lack of any proposed rate transition plan, (b) that any such increases will not be imposed without further order of the Commission, and (c) that any such increases, to the extent they occur, are likely to result primarily from the fact that NUI has not filed for a rate increase in seven years and the realignment of NUI's rate structure to be consistent with Piedmont's. These issues are discussed further below.

In its post-hearing brief, CUCA argued that the qualitative benefits identified by witness Dzuricky are devoid of adequate factual basis and that the quantifiable acquisition-related benefits should be shared with retail ratepayers "in order to ensure that the transaction will be beneficial to ratepayers and thus justified by the public convenience and necessity." The Commission has found net benefits and justification to approve the petition herein. Piedmont did not propose any sharing in its application, and no party presented a witness to advocate such a sharing. The matter is only addressed in brief cross examination by CUCA and in the CUCA brief. The Commission is not convinced that it should order any such sharing of benefits as argued by CUCA in its brief.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

The evidence supporting this finding is contained in the testimony of Public Staff witnesses Davis and Hoard.

Public Staff witnesses Davis and Hoard testified that Piedmont's proposed acquisition of NUI's North Carolina operations will have several public interest benefits. These include (a) the reduction of the potential for conflicts between the interests of Zone 6 Transco shippers, located in Maryland, New Jersey and New York, and Zone 5 Transco shippers such as Piedmont operating in the Southeast, (b) a company headquartered in North Carolina with its attention more closely focused on North Carolina, and (c) a larger entity more resistant to a hostile takeover. Public Staff witnesses Davis and Hoard also testified on cross-examination that the larger margin contained in Piedmont's residential rates would serve to make expansion into unserved areas of NUI's existing service area more feasible. With respect to the latter point, the Commission takes judicial notice of the fact that it has recently issued an order in Docket No. G-3, Sub 228 which relies upon traditional financing mechanisms to expand service within NUI's service territory. The Commission finds each of these factors to be in the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25

The evidence on market power and the competitive impact of Piedmont's proposed acquisition of NUI's North Carolina operations is undisputed and is set forth in the market power analysis prepared for Applicants by Dr. Lukens and attached as Exhibit D to the Petition.

In that analysis, Dr. Lukens concludes that there will be no market power or competitive impact on residential and small commercial customers as a result of Piedmont's proposed acquisition, inasmuch as such customers will be served by a regulated monopoly provider of gas service both before and after the acquisition. With respect to large commercial and industrial customers, Dr. Lukens' analysis indicates - based on an HHI value of 636 and Department of Justice guidelines - that the natural gas market in which Piedmont operates is unconcentrated. Based on these facts, Dr. Lukens concludes that the proposed acquisition is not likely to have any adverse effect on competition.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

The evidence for this finding is contained in and discussed in the previous sections of this Order addressing Findings Nos. 14-25.

The cumulative impact of this evidence and the Commission's related findings leads the Commission to conclude that Piedmont is more than capable of assuming the service obligations and operations of NUI in North Carolina; that NUI's customers (and new customers within NUI's existing service area) will benefit from Piedmont's substantially larger operational size, supply and capacity portfolio, and customer base; that net benefits to Piedmont and its ratepayers as well as to NUI's ratepayers will accrue as a result of the acquisition; and that the acquisition will serve other public policy goals and interests and will have no negative impact on competition.

Based on these conclusions, and in the absence of any evidence to the contrary, the Commission finds that Piedmont's proposed acquisition of NUI's North Carolina operations is consistent with the public interest and justified by the public convenience and necessity.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

In addition to approval of the acquisition by Piedmont of NUI's North Carolina operations, the Applicants also seek certain related authority involving the transfer of certificate authority from NUI to Piedmont, the respective initiation and termination of service by Piedmont and NUI within NUI's service territory, and certain other necessary and appropriate adjustments. The Commission finds each of these requested authorizations to be appropriate and necessary to effectuate the acquisition previously approved herein. Accordingly, based upon its previous findings and conclusions approving the acquisition, the Commission also grants each of the additional authorizations sought by Applicants to be exercised in a manner consistent with the provisions of this Order, Chapter 62 of the General Statutes, and the Commission's Rules and Regulations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

The evidence supporting this finding is set forth in the testimony of Public Staff witnesses Davis and Hoard and the Applicants' witness Dzuricky.

Public Staff witnesses Davis and Hoard recommended that, following the Commission's approval of the acquisition by Piedmont of NUI's North Carolina operations, Piedmont be required to "file a specific plan for switching NCGS customers to the Piedmont rate schedules." These witnesses further recommended that any such plan include a transition based on "a series of rate changes phased in over a period of more than one year." On cross-examination, witness Davis indicated his belief that Piedmont's rate transition plan should be the product of a cooperative process involving the Public Staff and other parties. Witnesses Davis and Hoard also explained that the reason they do not believe that a rate transition plan is currently necessary is that neither Piedmont nor the Public Staff has all the information necessary to construct such a plan at this time and that they believe further study is necessary before constructing such a plan. Witness Dzuricky testified in his rebuttal testimony that Piedmont agreed with the Public Staff's proposal in this regard. In the interim, witness Dzuricky proposed that Piedmont charge existing NUI customers NUI's currently approved rates. These rates will be changed, in part, through approval of a rate transition plan and, in part, through commodity cost changes in Piedmont's next annual prudence review proceeding, both of which will involve Commission review and approval before the implementation of new rates. These proposals by the Public Staff and Piedmont will ensure that NUI's existing customers do not suffer sudden adjustments in their rates as a result of the acquisition and will allow for a gradual transition from NUI's rate structure to the rate structure utilized by Piedmont. New customers within NUI's existing service area will be charged Piedmont's approved rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

The evidence supporting this finding is set forth in the Petition and in the testimony of Public Staff witnesses Davis and Hoard and the Applicants' witness Dzuricky.

This evidence recommends that the integration of NUI's existing customers into Piedmont's rate structure should be accomplished over a period of not less than a year and should be addressed in a rate transition plan to be filed by Piedmont for Commission review and approval following the consummation of this acquisition. The Commission finds this proposal to be just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

The evidence supporting this finding is contained in the testimony of the Public Staff witnesses and the rebuttal testimony of the Applicants' witness Dzuricky.

In their direct testimony, Public Staff witnesses Davis and Hoard testified that there are two potential acquisition adjustments raised by Piedmont's acquisition of NUI's North Carolina operations: (1) a $ 2.4 million adjustment carried on NUI's books associated with NUI's previous acquisition of the assets and operations of Pennsylvania & Southern Gas Company in 1993, and (2) a potential adjustment of approximately $4.3 million associated with Piedmont's acquisition of NUI's North Carolina operations in this case. The Public Staff argues that the Commission should preclude Piedmont from ever seeking to recover either adjustment from ratepayers in the Commission's order approving this acquisition. In his rebuttal testimony, Applicants' witness Dzuricky agreed that Piedmont will not seek future recovery of the Pennsylvania & Southern acquisition adjustment. No other party submitted testimony or evidence on this issue.

The Commission concludes that Piedmont shall not be permitted to recover from ratepayers the acquisition premium associated with NUI's prior acquisition of Pennsylvania & Southern Gas Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

The evidence for this finding of fact is found in the testimony of Applicants' witness Dzuricky and the Public Staff witnesses.

There is a dispute among the parties as to whether Piedmont should be permitted an opportunity to recover some or all of the $4.3 million acquisition premium in this case. Witness Dzuricky testified that Piedmont does not presently have any plans to increase rates for the purpose of recovering the $4.3 million acquisition premium, but that Piedmont would like to preserve its right to seek such recovery in the future if it determines that future conditions warrant doing so. Witness Dzuricky stated that all parties would be free to argue for or against recovery of the acquisition premium if Piedmont seeks such and the Commission would make the ultimate decision. The Public Staff witnesses testified that because the transaction is not contingent upon recovery of the acquisition premium and because NUI is not an operationally or financially troubled utility, it sees no reason why ratepayers should bear the risk of potentially paying higher rates in the future as a result of the acquisition premium on this transaction. From the Public Staff's perspective, Piedmont's shareholders, not ratepayers, would be the only potential benefactors of leaving the acquisition premium issue pending until a future date.

The Commission does not believe that Piedmont has adequately explained why it should be permitted the opportunity to charge Piedmont's 440,000 North Carolina ratepayers higher rates at some future date as the result of the acquisition premium associated with purchasing a gas system serving 14,000 NUI customers. The transaction is in no way contingent upon recovery of the acquisition and NUI is neither an operationally troubled nor financially troubled utility. Any benefits ratepayers receive as a result of this transaction inure to the benefit of ratepayers regardless of whether recovery of the acquisition premium is ever permitted. Further, denial of recovery of the acquisition premium is consistent with decisions in recent mergers of large electric and natural gas utilities and is the better decision in light of the standard for approval of mergers set forth in G.S. 62-111(a). G.S. 62-111(a) sets forth a broad public interest standard which requires that the Commission consider all aspects of a proposed merger. The Commission recognizes that it deferred ruling on the acquisition premium issue when the NUI-Pennsylvania & Southern Gas Company merger was approved in 1993. However, there have been several developments since that time. There have been a number of more recent mergers applications involving large electric and natural gas utilities. In the recent mergers of Carolina Power & Light Company and North Carolina Natural Gas Corporation, Docket Nos. E-2, Sub 740 and G-21, Sub 377 (1999); SCANA Corporation and Public Service Company of North Carolina, Inc., Docket Nos. G-5, Sub 400 and G-43 (1999); Dominion Resources, Inc., and Consolidated Natural Gas Company, Docket No. E-22, Sub 380 (1999); and Carolina Power and Light Company and Florida Progress Corporation, Docket No. E-2, Sub 760 (2000), the Commission ordered, as part of the merger approvals, that there be no effect upon utility rates from any acquisition adjustments. Further, by order of November 2, 2000, in Docket No. E-100, Sub 129, the Commission required that a cost-benefit analysis be filed as part of all electric and natural gas merger applications because such a study "will assist...the Commission in determining whether or not the merger meets the statutory standard." Such an analysis was filed in this docket, and the $4.3 million acquisition premium is the largest single item identified in the analysis. The Commission does not believe that it can determine whether Piedmont's acquisition of NUI is in the public interest if the treatment of this large item is left undecided. The Commission believes that its decision herein is consistent with recent electric and natural gas merger decisions and is the better course of action. Consequently, the Commission concludes that recovery of the acquisition premium associated with this transaction is not in the public interest and that Piedmont shall not be permitted to recover the acquisition premium from ratepayers.

IT IS, THEREFORE, ORDERED as follows:

1. That the acquisition by Piedmont of substantially all of the assets utilized by NUI to provide service to its North Carolina customers, as set forth in the May 14, 2002 Asset Purchase Agreement between Piedmont and NUI, is hereby approved;

2. That as of the effective date of the acquisition, all of NUI's rights and obligations under all certificates of public convenience and necessity heretofore issued by the Utilities Commission to NUI and/or its predecessors shall be transferred to and vest in Piedmont;

3. That as of the effective date of the acquisition, Piedmont is authorized to commence, and NUI is authorized to cease, providing service to NUI's existing customers;

4. That on and after the effective date of the acquisition, Piedmont is authorized to make appropriate changes in its policies and procedures, including its Gas Cost Recovery Mechanism, consistent with this Order, Chapter 62 of the General Statutes, and the Commission's Rules and Regulations;

5. That on and after the effective date of the acquisition, Piedmont is authorized to apply its Commission approved depreciation rates to the depreciable assets being purchased by Piedmont;

6. That Piedmont is directed to work with the Public Staff and other interested parties to develop a rate transition plan consistent with this Order providing for the transition of NUI's customers to Piedmont's rates and terms of service and to submit such plan to the Commission for approval;

7. That Piedmont shall not be permitted to recover from ratepayers either the acquisition premium for the present transaction or the acquisition adjustment carried on NUI's books related to its 1993 acquisition of Pennsylvania & Southern Gas Company;

8. That the Applicants shall file a written notice in this docket within thirty (30) days after consummation of the transaction approved herein; and

9. That this docket shall remain open for the purpose of receiving the notice required hereinabove.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of October, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

sk093002.03

Commissioners Conder and Owens dissent in part.

DOCKET NO. G-9, SUB 466
DOCKET NO. G-3, SUB 251

COMMISSIONER J. RICHARD CONDER DISSENTING IN PART.

I respectfully dissent with the majority of my colleagues in the Piedmont - NUI case as far as the decision not to defer a decision on the future ratemaking treatment of the acquisition premium. My support for the merger was positive.

The manner in which this Commission has chosen to treat the issue of the acquisition premium has varied over the years, from NUI - Penn Southern in 1993 to the treatment in more recent mergers of CP&L - NCNG and SCANA - PSNC. I further understand that the Commission allows merger acquisition premiums in numerous water cases; I find this Order inconsistent with both the NUI - Penn Southern case and these water cases. As I understand it, Piedmont's request was to defer rate treatment of the acquisition until a later date. The burden of proof would have been on Piedmont to prove that $4.3 million or more savings would have been realized because of the NUI merger. The consumer would not have suffered had we decided to allow deferral of this issue and the Commission would have access to more information at that later date when it considers how to treat the acquisition premium for ratemaking purposes.

The North Carolina General Assembly requires that utilities receive adequate revenues for the purpose of reliable, efficient and reasonable prices. In return the utility must provide such services that are expected of them by the consumers and the General Statutes of the State of North Carolina.

/s/ J. Richard Conder
Commissioner J. Richard Conder

Commissioner Robert V. Owens, Jr. joins in this dissent.

DOCKET NO. G-21, SUB 431

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of North Carolina Natural Gas Corporation	)	ORDER GRANTING PETITION
to Rebalance its Rates and to Increase its Approved	)	TO INCREASE MARGIN
Margin on Gas Sales By $4.1 Million	)	AND REBALANCE RATES

HEARD: Tuesday, September 10, 2002, at 9:30 a.m., in Commission Hearing Room 2115, Dobbs Building, 430 Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Lorinzo L. Joyner, Presiding; Commissioner Michael S. Wilkins and Sam J. Ervin, IV

APPEARANCES:

For North Carolina Natural Gas Corporation:

Len S. Anthony, Manager, Regulatory Affairs, P.O. Box 1551, Raleigh, North Carolina 27602-1551

For Carolina Utility Customers Association, Inc.:

James P. West, Two Hannover Square, Suite 1735, 434 Fayetteville Street Mall, Raleigh, North Carolina 27601

For the Using and Consuming Public:

Antoinette Wike, General Counsel, Public Staff – North Carolina Utilities Commission, P.O. Box 29520, Raleigh, North Carolina 27626-0520

For the United States Department of Defense:

Robert A. Ganton, Attorney for the U.S. Department of Defense, 901 N. Stuart Street, Suite 525, Arlington, VA 22203-1837

BY THE COMMISSION: On May 16, 2002, acting pursuant to Regulatory Condition No. 17 contained in the Commission's Order issued on July 13, 1999, in Docket Nos. E-2, Sub 740 and G-21, Sub 377, North Carolina Natural Gas Corporation (NCNG) filed a petition with the Commission to rebalance its rates and to increase its approved margin on gas sales by $4.1 million. Attached to NCNG's petition was a stipulation agreement entered into by NCNG, the Public Staff, and the Carolina Utility Customers Association, Inc. (CUCA), which included the following:

(A) The agreement itself, in which the parties agreed to the proposed $4.1 million margin increase, rate rebalancing, fixed gas costs apportionment by customer class, recomputation of the "R" factors associated with NCNG's weather normalization adjustment mechanism, recalculated construction credit, and elimination of NCNG's Price-Sensitive Volume Adjustment (PSVA) rider;

(B) Attachment I that sets forth the fixed gas cost apportionment by customer class associated with the proposed rebalancing of NCNG rates.

(C) Attachment II which reflects the amount of NCNG's investment in four major pipeline expansion projects since 1999 and the corresponding revenue requirement associated with these projects;

(D) Attachment III which contains the quantification of the financial impact of the proposed $4.1 million margin increase on NCNG (including a demonstration that NCNG will not exceed its authorized rate of return on common equity as a result of the proposed margin increase); and

(E) Attachments IV and V which set forth the rate design, revenue and rate impacts of the proposed margin increase of $4.1 million.

By order issued June 14, 2002, the Commission scheduled public hearings regarding NCNG's petition for the purpose of receiving the testimony of public witnesses in the cities of Wilmington, Fayetteville, and Kinston on August 19, 20 and 21, 2002, respectively; scheduled an evidentiary hearing for September 10, 2002, in Raleigh; required NCNG to publish notice of such hearings in newspapers having general coverage in the service area and to mail to each of its customers a copy of a notice not less than 45 days in advance of the hearings; ordered NCNG to file its direct testimony and exhibits on or before June 19, 2002; required petitions to intervene to be filed no later than August 23, 2002; and required the filing of direct testimony and exhibits by intervenors on or before August 23, 2002.

Petitions to intervene were filed by the Public Works Commission of the City of Fayetteville (PWC), CUCA, and the United States Department of Defense (DOD). All such petitions to intervene were granted.

On June 10, 2002, NCNG filed a letter from the DOD stating that the DOD does not object to approval of NCNG's petition.

On June 19, 2002, NCNG filed the direct testimony and exhibits of Robert Evans and Fredrick Hering.

On August 14, 2002, the PWC filed a letter with the Commission notifying the Commission that it does not object to NCNG's petition and did not intend to file testimony in this proceeding.

On August 23, 2002, the DOD filed the testimony of Kenneth L. Kincel.

The public hearings scheduled for the cities of Wilmington, Fayetteville, and Kinston were duly held on August 19, 20 and 21, 2002, respectively. No public witnesses appeared at any of these hearings.

On August 27, 2002, NCNG filed a motion to cancel or reschedule the hearing scheduled for September 10, 2002. In its motion, NCNG represented that none of the parties to the proceeding objected to NCNG's petition and since no one appeared at any of the public hearings held throughout NCNG's service territory, the Commission should either cancel or reschedule for an earlier date the September 10, 2002 hearing.

By Order issued September 3, 2002, the Commission denied NCNG's motion to cancel or reschedule the September 10, 2002 hearing on the grounds that the Commission intended the September 10, 2002 hearing in part for the taking of public witness testimony.

The September 10, 2002 hearing was held as scheduled. All parties agreed to waive cross-examination of all witnesses and to admit all prefiled testimony and exhibits into the record.

Based on NCNG's petition, the testimony and exhibits received at the hearing, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. NCNG is a public utility as defined in Chapter 62 of the North Carolina General Statutes.

2. NCNG is engaged primarily in the purchase, distribution, and sale and transportation of natural gas in south central and eastern North Carolina.

3. NCNG's petition was filed pursuant to Regulatory Condition No. 17, imposed by the Commission in connection with the 1999 merger of NCNG and Carolina Power & Light Company. This Regulatory Condition imposed a rate freeze on NCNG until November 1, 2003, subject to certain exceptions, and the petition was filed pursuant to two of these exceptions. These two exceptions allow rate changes to reflect major pipeline expansion projects and a rebalancing of rates to address rate of return disparities.

4. NCNG's request to increase its margin rates is justified and reasonable in order to incorporate NCNG's investment in four major pipeline expansion projects - the Sandhills pipeline, the Martin/Bertie main extension, the Tabor City main extension, and the Clayton compressor project - and is consistent with Regulatory Condition No. 17.

5. NCNG's request to rebalance its rates as set forth in its petition is reasonable and is consistent with Regulatory Condition No. 17.

6. It is reasonable and appropriate that NCNG eliminate its PSVA - Rider A to its tariffs, that the eight specific customer loads served under the PSVA be exempt from any increments or decrements, that NCNG not recover any negotiated losses with regard to gas sales to these customers, and that the gross margin realized by NCNG from sales of natural gas to these customers be shared between NCNG and its customers, with 50% going to the Deferred Gas Cost Account – All Customers. The existing balance of the PSVA deferred account will be transferred to the All Customers Deferred Gas Cost Account.

7. It is reasonable and appropriate to revise NCNG's Purchased Gas Adjustment Procedures - Rider B to its tariffs to update references to the fixed gas cost allocations to reference not only the last general rate case but also rate rebalancing proceedings such as this proceeding, and to add Section 3.11 that describes the treatment of the former PSVA customers and to modify Section 4, Negotiated Losses, to reflect the impact of the new section.

8. It is reasonable and appropriate to modify the R-factors used in NCNG's Weather Normalization Adjustment (WNA) – Rider C procedures and the construction credit associated with residential and small commercial gas line extensions in the manner set forth in Exhibits 3, 4, and 5 to the testimony of NCNG witness Evans.

9. The rate design, revenue and rate impacts set forth in Attachments IV and V to the stipulation agreement entered into between NCNG, the Public Staff and CUCA are reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3

These findings are essentially informational, procedural and jurisdictional in nature, and are not controversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is contained in the testimony of NCNG witnesses Hering and Evans and NCNG's petition.

NCNG witness Hering testified that Attachment II to the stipulation agreement entered into by the Public Staff, CUCA, and NCNG, shows the calculation of the revenue requirement for the four projects that these parties agreed qualified for inclusion in NCNG's rates under Regulatory Condition No. 17 as investments in major pipeline expansion projects. These projects were (1) the Sandhills pipeline, (2) the Martin/Bertie main extension, (3) the Tabor City main extension, and (4) the Clayton compressor. Witness Hering testified that the total requested revenue requirement for these four projects is $4,105,847.

NCNG witness Hering testified that Attachment III sets forth NCNG's cost of service including net operating income for return, rate base, and rate of return on rate base after the increase in Docket No. G-21, Sub 334, and adjusted for these four pipeline expansion projects. He testified that page two of this attachment shows the revenue/margin increase and the cost of service, rate base, and rate of return following the proposed rate increase. He testified that, following such rate increase, NCNG is still earning less than its allowed return approved in Docket No. G-21, Sub 334.

All of the parties in this proceeding either support or do not contest this proposed increase in margin rates. The Commission finds the request to increase margin rates by $4.1 million to incorporate NCNG's investment in these four major pipeline expansion projects is reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained in the testimony of NCNG witnesses Hering and Evans and NCNG's petition.

NCNG witness Hering testified that Attachment I to the stipulation agreement entered into by NCNG, the Public Staff, and CUCA sets forth the fixed gas cost percentage by customer class and the determination of the new percentages based upon the rebalancing of fixed gas costs as described in witness Evans' testimony, using the volumes from Docket No. G-21, Sub 334. Witness Hering testified that the effect of this rebalancing is to increase the percentages applicable to residential and commercial customers and to reduce the percentages for all other rate schedules. DOD witness Kincel testified in support of this fixed gas cost rebalancing. This margin increase will not result in NCNG exceeding its authorized rate of return on common equity.

In NCNG's petition, which is Exhibit 1 to witness Hering's testimony, NCNG states that the basis for the fixed gas cost recovery shift is two-fold: (1) it shifts a greater portion of the fixed gas cost recovery responsibility to those customers demanding and receiving the most firm level of service and (2) it encourages more industrial customers to purchase and/or transport natural gas to meet their energy needs, rather than use alternative fuels such as No. 2 and No. 6 fuel oil. Encouraging these customers to purchase and/or transport gas on NCNG's system allows NCNG to spread its fixed gas cost recovery over a larger spectrum of customers, which is a benefit to NCNG's overall body of customers.

All of the parties to this proceeding either support or do not contest this proposed rebalancing. The Commission concludes that the request to rebalance rates is reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding of fact is contained in the testimony and exhibits of NCNG witnesses Evans and Hering and NCNG's petition.

NCNG's petition states that its sales to those customers qualifying for NCNG's PSVA have consistently decreased primarily because the margin earned on sales to these customers is so small that they are always the first customers to be curtailed, which often causes these customers to utilize another source of energy rather than natural gas. NCNG proposes to eliminate this Rider.

The stipulation agreement provides that following the elimination of the PSVA the net margin earned by NCNG on sales or transportation services provided to the old PSVA customers should be divided in the following manner: 50% to be credited to NCNG's All Customers Deferred Account and the remaining 50% retained by NCNG. The term "net margin" is defined as meaning the actual price paid by these customers net of excise tax less the commodity cost of gas (including fuel) supplied to such customers and the volumetric transportation charges from the interstate pipeline. The parties have agreed that NCNG should not be allowed to recover any negotiated losses resulting from sales to these customers through the Deferred Gas Cost Account. Additionally, volumes related to these customers will be excluded from the fixed gas cost true-up, the commodity true-up, and the calculation of collections/refunds from increments and/or decrements. Finally, the parties have agreed that the cost of gas (including fuel and volumetric charges) and flowing quantity related to these customers will be excluded from NCNG's WACOG and not included in the Deferred Gas Cost Account.

All of the parties to this proceeding either support or do not contest this proposal. The Commission concludes that the request to eliminate the PSVA is reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding of fact is contained in the testimony and exhibits of NCNG witnesses Hering and Evans and NCNG's petition.

NCNG witness Hering testified that it is necessary to update references to the fixed gas cost allocations contained in Rider B to reference not only the last general rate case but also rate rebalancing proceedings, such as this proceeding, and to revise Rider B by adding Section 3.11 that describes the treatment of the former PSVA customers and modifying Section 4, Negotiated Losses, to reflect the impact of new Section 3.11.

All of the parties to this proceeding either support or do not contest this proposal. The Commission concludes that the request to revise Rider B is reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding of fact is contained in the testimony of NCNG witness Evans and NCNG's petition.

NCNG witness Evans testified that the proposed rate changes impact the R-factors that are used in NCNG's WNA procedures and the construction credit associated with residential and small commercial gas line extensions and that changes in these rate elements are required.

Witness Evans testified that R-factors are integral components used in NCNG's WNA billing procedure. R-factors are representations of NCNG's base rate net of all gas cost amounts. Since NCNG is proposing to change its margins, it is also necessary to change the R-factors. Since NCNG's WNA procedures are linked to Rate Schedules 1, 2, 10, and RE-2, the R-factors associated with these rates must be modified. These modifications are set forth in Exhibit 3 to witness Evans' testimony.

Regarding changes to NCNG's construction credit, witness Evans testified that NCNG's residential and small commercial gas line extension provisions utilize a construction credit mechanism that is based upon the present value of sales margins. A construction credit mechanism is utilized in cases where additional facilities, beyond standard plant allowances, are required. Witness Evans testified that in these cases, the amount of plant that can be supported by a potential customer is linked to the customer's usage and the margin that level of usage would produce. In other words, the more the usage and the greater the margin associated with that usage, the greater the construction expenditures that can be made on behalf of the potential customer. Since residential margins will be greater as a result of the rate changes proposed in this proceeding, the $17.05 allowance approved in G-21, Sub 334 as shown in part 9(f) of NCNG's Rules and Regulations, must be updated to $18.87 for residential and small commercial customers as shown on Exhibits 4 and 5 to witness Evans' testimony.

All of the parties to this proceeding either support or do not contest this proposal. The Commission concludes that the request to revise NCNG's R-factors and construction credit is reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding of fact is contained in the testimony and exhibits of NCNG witnesses Evans and Hering, NCNG's petition, and the testimony of DOD witness Kincel.

NCNG witness Evans testified that the rate design proposed by NCNG was a result of the negotiations between NCNG, the Public Staff, and CUCA which resulted in the stipulation agreement. The rates proposed reflect a composite of interests that were expressed by the various parties involved in the negotiating process. Witness Evans testified that these interests were formulated into parameters that provided an overall pattern for the rate development process. The first of these parameters was that 10% of the increase in margins would come from customers not receiving service under Rate 1 (residential service) and Rate 2 (commercial and small industrial service). Another parameter provided that increases to Rates 1 and 2 would be based on specific percentages (ranging from 6% to 6.2%) when compared to the revenue levels approved by the Commission in NCNG's last general rate case, Docket G-21, Sub 334. He further testified that all rate changes proposed in this proceeding are based upon activity that occurred in NCNG's last rate case. As a result, no new schedules or modifications to NCNG's service rules were introduced in this proceeding and all changes in rates were limited to the rate schedules that were in effect during that time period.

Witness Evans testified that the proposed rates were developed using a three-step process. The first two steps involved the assignment of the $4.1 million in margin increases to rate schedules using both changes to the monthly facility charges and revisions to the commodity rates. The last step in this rate development process involved the realignment of the commoditized fixed gas cost recovery factors.

He then testified that the first step in the redesign of the facilities charges, as reflected in his Exhibit I, was to change them to the same level that was approved by the Commission in NCNG's last rate case. The next step was to make small additional increases in margins to residential and commercial rate levels to produce the desired facilities charges.

With regard to the development of the proposed commodity rates, Exhibit II to witness Evans' testimony sets forth the proposed changes to these rates. Witness Evans testified that the first task involved in the commodity rate development process was the recognition of the additional revenue that was produced by increasing the facilities charges. The next step was to increase the margins in the commodity rates for Rates 1 and 2 (totaling 90% of the increase) and the margin in the commodity rates of all other affected rate schedules (totaling 10% of the $4.1 million). Of the $3.7 million, which is the 90% share of the total increase that is associated with Rate Schedules 1 and 2, approximately $0.75 million was recovered through increases in facilities charges. Of the non-residential/commercial allocation of the $4.1 million increase, $.4 million, only about $21,000 was offset by increases in facilities charge revenues. As a result, increases of $2.95 million were applied to Rate Schedules 1 and 2 and increases of $0.38 million were applied to all other affected rate schedules. At this point, increases in fixed gas cost allocations were applied to produce the targeted changes for Rate Schedules 1 and 2. Offsets for the increases in the fixed gas cost allocations assigned to Rate Schedules 1 and 2 were then applied to all other affected rate categories in order to neutralize the adjustment's impact on overall fixed gas costs allocations.

DOD witness Kincel testified that the rate design methodology used by NCNG was reasonable.

All of the parties to this proceeding either support or do not contest this proposed rate design. The Commission concludes that the proposed rate design is reasonable and appropriate.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG's request to rebalance its rates as reflected in Attachment I to the stipulation agreement attached to NCNG's petition is approved.

2. That NCNG's petition to increase its margin rates by $4.1 million is approved and such margin increase shall be accomplished through the proposed rates contained in Exhibit II to the testimony of NCNG witness Hering and such proposed rates are effective as of the date of this Order.

3. That NCNG's proposed changes to Rider B are approved.

4. That NCNG's petition to eliminate its PSVA is approved. Any net margin earned by NCNG on sales and/or transportation services provided to the former PSVA customers shall be divided such that 50% of such net margin shall be credited to NCNG's All Customers Deferred Account and the remaining 50% retained by NCNG. The term "net margin" shall mean the actual price paid by such customers net of excise tax less the commodity cost of gas (including fuel) supplied to such customers and volumetric transportation charges from the

interstate pipeline. NCNG shall not be allowed to recover any negotiated losses resulting from sales to the previous PSVA customers through the Deferred Gas Cost Account. Volumes related to these customers will also be excluded from the fixed gas cost true-up, the commodity true-up, and the calculation of collection/refunds from increments and/or decrements. The cost of gas (including fuel and volumetric charges) and flowing quantity related to these customers will be excluded from NCNG's WACOG and not included in the Deferred Gas Cost Account.

5. That the "R" factors associated with the WNA will be recomputed based on the change in margins for all affected customers.

6. That the recalculated construction credit listed in Section 9(f) of NCNG's Service Rules and Regulations, shall be $18.87.

7. That NCNG shall give notice, in a form to be approved by the Commission, to all of its customers of the changes in rates approved in this Order by appropriate bill inserts beginning with the first billing cycle that includes the changes in rates approved herein.

ISSUED BY ORDER OF THE COMMISSION.
This is the 23rd day of September, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

dh091702.01

DOCKET NO. G-46, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Request by Delphi Development, LLC for) ORDER DENYING REQUEST
Approval of Natural Gas Master Metering) FOR MASTER METERING

BY THE COMMISSION: On March 4, 2002, Delphi Development, LLC (Delphi) filed a letter requesting Commission approval of natural gas master metering for the Sawyer Motor Building, a 20-unit condominium development in Asheville, North Carolina. By its letter, Delphi proposes that natural gas will be used for "gas stoves only." Delphi states that the natural gas will be a common expense paid by the homeowners association, that the gas will not be resold, and that the local natural gas utility had informed Delphi that it needed a waiver from the Commission to install a master meter for natural gas.

G.S. 143-151.42 provides in pertinent part:

> From and after September 1, 1977, in order that each occupant of an apartment or other individual dwelling unit may be responsible for his own conservation of electricity and gas, it shall be unlawful for any new residential building, as hereinafter defined, to be served by a master meter for electric service or natural gas service. Each individual dwelling unit shall have individual electric service and, if it has natural gas, individual natural gas service with a separate natural gas meter, which service and meters shall be in the name of the tenant or other occupant of, said apartment or other dwelling unit. No electric supplier or natural gas supplier, whether regulated public utility or municipal corporation or electric membership corporation supplying said utility service, shall connect any residential building for electric service or natural gas service through a master meter, and said electric or natural gas supplier shall serve each said apartment or dwelling unit by separate service and separate meter and shall bill and charge each individual occupant of said separate apartment or dwelling unit for said electric or natural gas service. . . . Provided, however, that any owner or builder of a multi-unit residential building who desires to provide central heat or air conditioning or central hot water from a central furnace, air conditioner or hot water heater which incorporates solar assistance or other designs which accomplish greater energy conservation than separate heat, hot water, or air conditioning for each dwelling unit, may apply to the North Carolina Utilities Commission for approval of said central heat, air conditioning or hot water system, which may include a central meter for electricity or gas used in said central system, and the Utilities Commission shall promptly consider said application and approve it for such central meters if energy is conserved by said design. (Emphasis added.)

The Commission concludes that Delphi's request for approval of master metering should be denied. G.S. 143-151-42 prohibits gas and electric master meters for new residential buildings "in order that each occupant of an apartment or other individual dwelling unit may be responsible for his own conservation of electricity and gas." The statute provides that a builder who wishes to provide central heating, air conditioning or hot water which incorporates solar assistance or other designs which accomplish greater energy conservation than separate heating, air conditioning, or hot water for each dwelling unit, may apply to the Commission for approval of such a central system, which may include a master meter. The Commission shall approve such an application "if energy is conserved by said design." The statute allows for waiver for central heating, air conditioning, or hot water if the design of the central system saves energy. In the present case, Delphi proposes a natural gas master meter for cooking only and, even then, shows no energy savings. Delphi's request does not come within the waiver provisions of G.S. 143-151-42, and its request must be denied.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION
This the 12th day of March, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Rg031102.05

DOCKET NO. P-120, SUB 15
DOCKET NO. P-120, SUB 16

DOCKET NO. P-120, SUB 15)
)
In the Matter of)
Application of the Town of Pineville, d/b/a Pineville)
Telephone Company, To Offer Local Exchange and)
Exchange Access Service as a Competing Local) ORDER ALLOWING FOR
Provider) CLP AND IXC CERTIFICATION
)
DOCKET NO. P-120, SUB 16)
)
In the Matter of)
Petition for Approval of Certificate to Provide Long)
Distance Service)

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, October 1, 2002, at 9:30 a.m.

BEFORE: Commissioner James Y. Kerr, II, Presiding; Chairman Jo Anne Sanford, and Commissioners J. Richard Conder, Robert V. Owens, Jr., and Lorinzo L. Joyner

APPEARANCES:

FOR THE APPLICANT:

Daniel C. Higgins, Burns, Day & Presnell, P.A., Post Office Box 10867, Raleigh, North Carolina 27605

FOR THE PUBLIC STAFF:

Antoinette Wike, Chief Counsel, Public Staff, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326.
For: The Using and Consuming Public

BY THE COMMISSION: This proceeding was initiated by the filing of an application on March 27, 2002, by the Town of Pineville (Pineville), which offers local exchange telephone service in part of the Town of Pineville under the name "Pineville Telephone Company." Pineville seeks a certificate from the Commission authorizing Pineville to offer local exchange or exchange access services as a competing local provider (CLP) in that portion of the Town in which Pineville does not presently offer service as an incumbent local exchange company. Pineville's application was assigned Docket No. P-120, Sub 15.

On April 11, 2002, Pineville also filed an Application for a Certificate of Public Convenience and Necessity authorizing it to provide resold intrastate interexchange service. By agreement with the Public Staff, Pineville has limited its proposed service area for offering resold interexchange service to the area inside the corporate limits of the Town of Pineville. Pineville's application for a Reseller Certificate was assigned Docket No. P-120, Sub 16.

The Public Staff reviewed Pineville's CLP application and has raised a question as to whether the Commission has the legal authority to grant Pineville's application for a CLP certificate. On August 20, 2002, Pineville filed a request that the Commission hear oral argument with regard to the Public Staff's question.

The Commission issued its Order Concerning Briefs and Setting Oral Argument on August 28, and its Order Rescheduling Oral Agreement on August 30, 2002. Pineville and the Public Staff filed briefs on September 6, pursuant to the Commission's Order, and the Commission heard oral arguments on October 1, 2002.

In 1995 the North Carolina General Assembly enacted House Bill 161, which authorized competitive local exchange service in North Carolina. The portions of H.B. 161 pertinent to the question raised by the Public Staff are codified at G.S. 62-110(f1) and (f2), which authorize the Commission to allow competition in the provision of local exchange and exchange access services. The United States Congress subsequently enacted the Telecommunications Act of 1996 (TA96). The Commission takes judicial notice of TA96. TA96, and rules adopted by the Federal Communications Commission to implement TA96, may be preemptive of certain state laws and decisions of this Commission.

After careful consideration of the question raised by the Public Staff as to whether the Commission has the legal authority to issue a CLP certificate to Pineville, and based upon a review of Pineville's filings with the Commission, the entire record in this proceeding and the legal authorities cited by the parties, the Commission now makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Town of Pineville is a North Carolina municipal corporation, chartered by the North Carolina General Assembly in 1873.

2. Pineville has been providing telephone service in and around the Town of Pineville since 1938.

3. Pineville's current Charter was enacted as House Bill 314 by the North Carolina General Assembly in 1965 (Chapter 296 of the Session Laws of 1965). Pineville's Charter was amended by House Bill 1469 in 1971. Pursuant to that amendment, Article I, Section I of Pineville's Charter reads, in pertinent part, as follows:

> The following shall be deemed to be a part of the powers conferred upon the Town of Pineville by this Section:

* * *

> (2) To furnish all local public service; to purchase, hire, construct, own, maintain and operate or lease all public utilities including but not limited to water, sewer, electricity, telephone . . . both inside and outside the corporate limits. . . .

4. As a result of a dispute between BellSouth and Pineville, in 1973 the General Assembly amended the Public Utilities Act, G.S. 62-1, *et seq.*, to expand the definition of "Public utility" to include Pineville. This amendment was codified at G.S. 62-3(23)f. Pursuant to that amendment of the Public Utilities Act, the Commission issued a Certificate of Public Convenience and Necessity to Pineville in October 1973. Pineville has, since that time, offered telephone service as a public utility. Pineville is a "Local Exchange Company" (LEC), as defined in G.S. 62-3(16a) and Commission Rule R17-1(g).

5. As of the end of June 2002, Pineville Telephone Company was providing service to 700 residential access lines and 1,299 business lines. In the nearly 30 years since the Commission first issued a Certificate to Pineville in the mid-1970's, the geographic size of the Town of Pineville has increased significantly. As a result, Pineville presently offers telephone service in only approximately one-third of the area inside the Town's corporate limits. Local exchange service in the remainder of the Town (that portion not served by Pineville) is provided by BellSouth and those CLPs offering competitive service in BellSouth's franchise service area.

6. Pineville's request for CLP authority is limited to that portion of the area inside the Town's corporate limits where Pineville does not presently offer service as a LEC. That area is in BellSouth's franchise area. Likewise, Pineville's request for a certificate authorizing it to offer resold interexchange service is limited to reselling that service within the corporate limits of the Town of Pineville. Pineville can voluntarily choose, under the terms of G.S. 62-110(f1), to specifically limit the proposed geographic territory to be served by it to the remainder of the Town of Pineville. Likewise, there is no provision in G.S. 62-110(b) which precludes an applicant for a certificate to provide resold interexchange service from limiting the geographical area in which it proposes to offer that service.

7. In 1995 the General Assembly amended the Public Utilities Act to authorize local exchange competition. G.S. 62-110(f1) authorizes the Commission as follows:

> To issue a Certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23)a.6., without regard to whether local telephone service is already being provided in the territory for which the Certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission [as to five specifically identified criteria].

As a municipal corporation, Pineville is a "Person" as that term is defined in G.S. 62-3(21).

8. Because of Pineville's unique circumstances, as the only municipal corporation providing telecommunications service as a public utility in North Carolina, the 1995 amendment to the Public Utilities Act to authorize competitive local service gives the Commission legal authority to issue a CLP certificate to Pineville.

9. The Commission has the legal authority to issue a CLP certificate to Pineville authorizing it to offer CLP service inside the Town's corporate limits, with such certification to be contingent on the Town of Pineville opening its existing LEC franchise area to competition.

10. The Commission has the legal authority to issue a Certificate to Pineville authorizing it to offer resold intrastate interexchange service inside the Town's corporate limits.

EVIDENCE FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW 1, 2 AND 3

These findings are matters of public record, are supported by the record as a whole, and are uncontested.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW 4

This finding concerns matters that are found in the public record, as well as the Commission's record from Docket No. P-55, Sub 663 and related appeals, of which the Commission can take judicial notice. This finding is also based on Pineville's filings with this Commission, and it is otherwise uncontested.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW 5

This finding is supported by the public record, in the form of Pineville's reports regularly filed with the Commission and other Commission records. It is a matter of public record that BellSouth is subject to local exchange competition, both pursuant to G.S. 62-110(f1) and TA96. It is uncontested that BellSouth's franchise area includes the Town of Pineville, except for the portion of the Town served by Pineville. It is likewise undisputed that BellSouth is subject to competition by numerous CLPs which the Commission has certificated, some of whom are, presumably, competing for service in that portion of BellSouth's franchise area which includes the Town of Pineville. This finding is supported by the record as a whole, and is uncontested.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW 6

This finding as to the limited geographical scope of Pineville's request for authority is procedural, is uncontested, and is based on Pineville's filings with the Commission and the public record.

The Commission's conclusion that Pineville can voluntarily choose to limit the proposed geographic territory to be served by it as a CLP is based upon our analysis of G.S. 62-110(f1) and Commission Rules R17-2(7) and (8). First, G.S. 62-110(f1) provides, in pertinent part, as follows: "In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic area to be served. . . ." Second, Commission

Rule R17-2(8) requires an applicant to provide "a statement setting forth with particularity the proposed geographic areas to be served. . . ."

Nothing in either the underlying legislation or the Commission's Rule requires that a CLP serve any particular area in the State, or that a CLP seek to offer service in any broader geographic area than the CLP so desires. In this case Pineville's CLP application described, in Section 10, the proposed geographic area or areas to be served as follows: "The area inside the municipal corporate limits of the Town of Pineville, as they exist now or in the future." We conclude that the Town of Pineville has adequately and permissibly described the limited geographical area in which it wishes to offer service as a CLP.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW 7

This finding concerns a matter of law, is based on the Public Utilities Act, is supported by the public record, and is uncontested.

The Public Staff explicitly concedes in its Brief that a municipal corporation is included in the definition of "person" in G.S. 62-3(21). We conclude that the pertinent provisions of the Public Utilities Act are reasonably construed to conclude that Pineville is a "person," as that term is defined in the Public Utilities Act. We further conclude that since Pineville is a "person," if it satisfies the criteria for CLP certification enumerated in G.S. 62-110(fl), then Pineville is eligible for and entitled to certification as a CLP.

EVIDENCE FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW 8 AND 9

The sole controverted question in this docket is whether the Commission can legally grant a CLP or IXC certificate to Pineville – or, more specifically, whether Pineville can take advantage of the provisions of the CLP authorization statute or, by extension, the long distance statute, to offer service throughout its current or future corporate limits whether it is confined to the geographical limits set out in G.S. 62-3(23)f.

Pineville argued that it may apply for a certificate of public convenience and necessity as a CLP pursuant to G. S. 62-110(fl) because it is a "person" and is authorized by its charter to own, maintain, and operate public utilities and because it has satisfied the five statutory criteria. Pineville further asserted that when the legislature enacted G.S. 62-110(fl), it added G.S. 62-3(16a), defining "local exchange company" as "a person holding, on January 1, 1995, a certificate to provide local exchange services or exchange access services." Thus, Pineville is a local exchange company. While Pineville is subject to the provisions of G.S. 62-110(f2), since it serves fewer than 200,000 access lines, this subsection does not prevent Pineville from competing outside of its franchised area for local exchange and exchange access services, because it has agreed to open its franchised territory to competition. Finally, with regard to the language in G.S. 62-3(23)f., describing the territory to be served by the Town in furnishing telephone services subject to the Public Utilities Act, Pineville argued that the legislature effectively amended this language by enacting G.S. 62-110(fl) and (f2), which provide for local competition, specifically for small LECs to compete outside their franchised areas. Pineville further argued that certification is in the public interest, comports with the purposes of the Telecommunications Act, and is desired by many of the town's residents.

For its part, the Public Staff has stated that it does not oppose Pineville's application as a matter of policy and indicates that it would appear to be in the public interest for Pineville to be able to offer service throughout its corporate limits. The Public Staff further agreed that Pineville is a "person" and otherwise satisfies the requirements for obtaining a CLP certificate pursuant to G.S. 62-110(f1). However, the Public Staff argued that Pineville's status as a public utility appears to be limited to the territory specified in G.S. 62-3(23)f., and consequently any certificate issued to the Town to provide local exchange or exchange access services pursuant to G.S. 62-110(f1) would be a nullity.

The Public Staff pointed out that LECs and CLPs are public utilities as defined in G.S. 62-3(23)a.6 and that, while a municipality is included in the definition of "person" in G.S. 62-3(21), municipalities are excluded from the definition of "public utility" by G.S. 62-3(23)d. Prior to May 8, 1973, the Town of Pineville provided telephone service without a certificate and without violating Chapter 62. With the implementation of Chapter 372 of the Session Laws of 1973, the Town of Pineville acquired the obligations and protections of a public utility within its franchised territory. Since G.S. 62-3(23)f. specifies the "territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act," the Public Staff believes that the Commission is without authority to issue the town a certificate as a competing local provider outside its franchised area under G.S. 62-110(f1) and (f2).

The Public Staff emphasized that the Commission has no other authority than that granted by the Legislature. In essence, according to the Public Staff, Pineville is arguing that a portion of G.S. 62-3(23)f. has been repealed by implication through the operation of G.S. 62-110(f1) and (f2). Repealing by implication is not favored, and courts will give effect to statutes covering the same subject matter where they are not absolutely irreconcilable and there is no clear purpose of repeal. See, Person v. Garrett, 280 N.C. 163, 184 S.E. 2d 873 (1973). Thus, any remedy for Pineville must emanate from the Legislature.

The Commission believes that the question of whether Pineville should be certified as a CLP and IXC is a close one; but, on balance, we believe that the better view favors Pineville's certification.

There are several reasons for our conclusion. First, among municipalities, Pineville is unique in having been granted public utility status under Chapter 62. There clearly has been an intent by the General Assembly for Pineville to provide telephone services within its borders, something which cannot be said of other municipalities. Moreover, the provision of telephone services was to be "subject to the Public Utilities Act." The Public Utilities Act evolves over time, and the General Assembly recognizes – and, indeed, is the cause – of its expansion and contraction in scope.

Second, when the General Assembly passed G.S. 62-110(f1) and (f2) it was presumed to be aware of Pineville's situation, but it made no effort to exclude Pineville from the potential operation of the statute. It is conceded by all that Pineville is a "person" who would otherwise be eligible for CLP or IXC certification. In any event, the geographic restrictions contained in G.S. 62-3(23)f. arguably only operate to restrict Pineville's operation as a LEC, not as a CLP. Numerous LECs in fact have obtained CLP certificates.

Third, public policy as expressed by G.S. 62-110(f1) and (f2), as well as by the Telecommunications Act of 1996, favors local competition. See, e.g., Section 253 of TA96 (Removal of Barriers to Entry). In this vein, it is noteworthy that the local exchange company with the most immediate and material interest arguably adverse to the expansion of Pineville's authority – namely, BellSouth – chose not to intervene in this proceeding or to otherwise oppose Pineville's request. Indeed, it was the unanimous view of all the parties, including the Public Staff, that, other things being equal, the expansion of Pineville's authority so it could serve the balance of its current and future municipal limits was a good thing for all concerned.

Accordingly, the Commission concludes that it has the legal authority to grant a CLP certificate to Pineville to offer CLP service within the Town's corporate limits, with such certification being contingent upon Pineville opening up its LEC franchise to competition – which Pineville has agreed to do. The Commission, by the same token, has the legal authority to allow Pineville to offer intrastate long distance service. The Commission emphasizes that its conclusion in these dockets is limited solely to Pineville and arises from the unique circumstances pertaining to it.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW 10

G.S. 62-3(23)f amended the Public Utilities Act to modify the definition of "Public Utility" to include Pineville. As noted above, this statutory provision authorizes Pineville to furnish "telephone services." The use of the plural term "services" means that Pineville is authorized to provide a broader range of telephone services, and it is not limited to simply offering local exchange service. We conclude that the provision of resold interexchange service to business and residents located inside the Town is a telephone service.

Pineville's limited objective of obtaining authority from the Commission to offer local resold interexchange service in the Town does not appear to conflict with any applicable law. Pineville's Charter specifically authorizes the provision of telephone service. In addition, G.S. 160A-4 mandates a broad construction of Pineville's Charter. Based on all of the foregoing, we reasonably conclude that the Commission has the authority to authorize Pineville to offer telephone service anywhere inside its corporate limits.

G.S. 62-110(b) authorizes the Commission to issue a certificate for interexchange service "to any person applying," providing that the applicant makes the showing required by that statute. As a municipal corporation, Pineville is a "person" under G.S. 62-3(21). The Commission reaches the inescapable conclusion that if Pineville is a person then it is eligible for certification as a reseller. Based upon our analysis above pertaining to CLP certification, the Commission concludes by the same token that it is a reasonable construction of the relevant and pertinent statutes to conclude that Pineville is a person and, therefore, that it can be certificated as a reseller of interexchange service.

IT IS, THEREFORE, ORDERED as follows:

1. That the Town of Pineville's application for authority to provide service inside the municipal corporate limits of Pineville is hereby accepted, with such grant of authority contingent on Pineville opening its existing franchise area to local exchange competition. Before Pineville commences any offering of service to the public as a CLP, Pineville shall mail written notice to all CLPs certificated by the Commission stating that Pineville's franchise area is open to local exchange and exchange access competition;

2. That the Town of Pineville's application for authority to provide resold intrastate interexchange service inside the municipal corporate limits of Pineville is hereby accepted; and

3. That the Public Staff shall process the local and long distance applications of Pineville in accordance with its regular procedure and advise the Commission at such time as they have been sufficiently perfected to be issued.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of December, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

pb120402.02

Chairman Jo Anne Sanford and Commissioner J. Richard Conder dissent.

DOCKET NO. P-120, SUB 15
DOCKET NO. P-120, SUB 16

CHAIRMAN JO ANNE SANFORD, DISSENTING:

I must respectfully dissent from the majority's decision to grant CLP and IXC certificates to Pineville. I say "regretfully" because I believe that, other things being equal, Pineville has a very meritorious case. Indeed, I would have voted for Pineville's certification as a CLP or IXC but for my belief that our courts do not sanction the repeal of statutes by implication. G.S. 62-3(23)f. very specifically limits the geographical scope of Pineville's ability to serve to Pineville's corporate boundaries, as those boundaries, existed on January 1, 1975. It may seem an odd technicality -- an antiquated anomaly -- but there it is. The General Assembly later passed a more general law authorizing "persons" to be granted competing local provider certificates. Did that later-passed, but more general, law render the geographical limits set forth in part of G.S. 62-3(23)f. a dead letter? I do not think so. The Public Staff cited to Person v. Garrett, 280 N.C. 163, 184 S.E.2d 873 (1973), which in relevant part held:

> A statute is not deemed to be repealed merely by the enactment of another statute on the same subject. The later statute on the same subject does not repeal the earlier if both can stand, or where they are cumulative, and the court will give effect to statutes governing the same subject matter where they are not absolutely irreconcilable and when no purpose of repeal is clearly indicated.

In the instant case, there was plainly no purpose of intent to repeal the limitations of G.S. 62-3(23)f. by the new statute. Pineville was not even mentioned. Certainly, both statutes can stand; they are not irreconcilable. It would therefore seem to me that this case fits squarely within the above principle and, however much I might wish the result to be otherwise, it would be preferable for the General Assembly to address this anomaly rather than this Commission.

\s\ Jo Anne Sanford
Chairman Jo Anne Sanford

DOCKET NO. P-140, SUB 79

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Unauthorized Reduction of Service, Unlawful) RECOMMENDED ORDER
Discrimination, and Violations of FCC Regulations) FINDING VIOLATIONS AND
by AT&T Communications of the Southern States,) IMPOSING PENALTY
LLC)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, July 16, 2002

BEFORE: Commissioner Lorinzo L. Joyner, Presiding, and Commissioners Sam J. Ervin, IV, and Michael S. Wilkins

APPEARANCES:

For AT&T Communications of the Southern States, LLC:

Gene V. Coker
Post Office Box 681841
Marietta, Georgia 30068

T. John Policastro
AT&T Communications of the Southern States, LLC
150 Fayetteville Street Mall
Suite 1340
Raleigh, North Carolina 27601

For the Using and Consuming Public:

Robert S. Gillam, Staff Attorney
Public Staff - North Carolina Utilities Commission
4326 Mail Service Center
Raleigh, North Carolina 27699-4326

BY THE COMMISSION: On June 19, 2001, the Public Staff -- North Carolina Utilities Commission (Public Staff) filed a Petition for Order to Show Cause against AT&T Communications of the Southern States, LLC (AT&T), asserting that as a result of certain actions it took in the course of a dispute with Madison River Communications, LLC (MRC), AT&T had reduced services to its customers without Commission authorization in violation of G.S. 62-118(a), had failed to provide adequate service to its customers in violation of G.S. 62-131(b), had discriminated against certain of its customers in violation of G.S. 62-140(a), and had violated certain provisions of the federal Communications Act. The Public Staff requested that

AT&T be penalized under G.S. 62-310 for its violation of North Carolina statutes, and that MRC be made a party to this docket.

On June 22, 2001, AT&T moved that the proceeding be converted into a rulemaking proceeding. The Public Staff filed a response on July 3, 2001, opposing AT&T's motion. On July 18, 2001, the Commission issued an order denying the motion to convert the proceeding into a rulemaking proceeding; directing AT&T to appear at a hearing on November 27, 2001, and show cause why the relief sought by the Public Staff should not be granted; and making MRC a party to the proceeding. In response to various motions of the parties, the hearing was subsequently continued until July 16, 2002.

On September 27, 2001, AT&T filed a response denying the statutory violations alleged by the Public Staff. On October 18, 2001, the Public Staff moved for permission to file an Amended Petition for Order to Show Cause alleging statutory violations against MRC as well as AT&T. The Commission granted the Public Staff permission to file the amended petition.

The Public Staff filed a Notice of Voluntary Dismissal against MRC on December 2l, 2001. On December 28, 2001, the Commission issued an order dismissing MRC from the proceeding with prejudice.

The Public Staff prefiled the testimony of John T. Garrison, Jr. on January 18, 2002. On February 13, 2002, AT&T prefixed the testimony and exhibits of William J. Taggart, III. On February 20, 2002, the Public Staff prefiled the rebuttal testimony of witness Garrison.

The matter came on for hearing as scheduled. The Public Staff offered the testimony of witness Garrison, and AT&T offered the testimony and exhibits of witness Taggart.

Based on the foregoing, the evidence and exhibits presented at the hearing, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. AT&T has been certified by this Commission as an interexchange carrier (IXC) and is authorized to do business as a public utility in North Carolina. MRC is likewise authorized to do business as a public utility in North Carolina, having been certified by this Commission as a competing local provider of telecommunications services (CLP) in an order that became effective on October 10, 1998. At the time it was certified in 1998, MRC was operating under the corporate name of MEBTEL Integrated Communications Solutions, L.L.C.

2. On April 26, 1999, the letter admitted in evidence as AT&T Exhibit WJT-1 was sent by AT&T to MEBTEL Integrated Communications Solutions, L.L.C. In this letter AT&T indicated that it was not willing to pay MRC for access services unless it had ordered those services and had reached agreement with MRC as to the rates to be charged.

3. In late 1999 MRC began to provide access services to AT&T, and in December 2000 it began to bill AT&T for those services. MRC billed AT&T for intrastate

access services at rates equal to those charged by its affiliated incumbent local exchange carrier (ILEC), MEBTEL, Inc. AT&T had not ordered these access services from MRC.

4. AT&T was opposed in concept to the idea of paying for access charges it had not ordered, or paying access rates set unilaterally by a CLP without AT&T's participation. It considered non-competitive CLP access rates to be a serious problem.

5. On March 7, 2001, AT&T sent MRC the letter admitted in evidence as AT&T Exhibit WJT-2. In this letter AT&T instructed MRC to cease routing traffic to AT&T's network; not to complete any calls from AT&T's network that were intended for MRC customers; not to presubscribe any of its customers to AT&T; and to assist any MRC customers already presubscribed to AT&T with changing their long distance service provider.

6. On March 27, 2001, MRC sent AT&T the letter admitted in evidence as pages 1-2 of AT&T Composite Exhibit WJT-3. In this letter MRC refused to carry out the instructions given by AT&T in its March 7, 2001 letter.

7. Between March 7 and April 25, 2001, MRC attempted to contact AT&T and reach agreement on payment for access services previously provided by MRC and rates to be charged for access services to be provided in the future, but no agreement was reached. On April 24, 2001, MRC sent AT&T the letter admitted in evidence as page 3 of AT&T Composite Exhibit WJT-3.

8. As of April 25, 2001, AT&T had not paid MRC anything for the access services it had received from MRC.

9. On April 25, 2001, MRC ceased routing 1+ traffic to AT&T, ceased allowing new end users to presubscribe to AT&T, and directed its end users already presubscribed to AT&T to change to other long distance carriers. MRC did not block toll free or 1-800 calls to AT&T's network and did not stop providing terminating access to AT&T.

10. MRC resumed routing 1+ traffic to AT&T, and presubscribing end users to AT&T, on June 26, 2001.

11. By willfully refusing to pay for the access services MRC had provided, and by directing MRC to discontinue these services in its letter of March 7, 2001, AT&T induced MRC to block 1+ calls made by its customers to AT&T's network. Although MRC alone made the decision to block these calls, AT&T's nonpayment of access charges and its instructions in the March 7 letter were both designed to induce MRC to cease providing access services to AT&T, which MRC neither sought nor desired to do. AT&T thus used MRC as its instrumentality in bringing about the partial cessation of access services. Consequently, MRC's act in blocking its customers' calls is attributable to AT&T from a legal perspective.

12. By causing MRC to block 1+ traffic to AT&T's network, AT&T reduced its services to its customers without Commission authorization, in violation of G.S. 62-118(a); failed to provide adequate service to its customers, in violation of G.S. 62-131(b); discriminated

against its customers who received local service from MRC, in violation of G.S. 62-140(a); and violated the August 6, 1990, order of this Commission in Docket No. P-100, Sub 72, requiring that AT&T continue to provide originating and terminating long distance service in North Carolina and not suspend or withdraw that service without prior Commission approval.

13. As a result of MRC's partial cessation of access services to AT&T, AT&T's customers who took local exchange service from MRC were unable to place calls over AT&T's network. MRC's customers who had not selected AT&T as their presubscribed interexchange carrier (PIC), but wished to use AT&T's network on a casual call basis, were unable to do so. AT&T made no effort to assist its customers in obtaining alternative long distance service, other than requesting that MRC provide such assistance.

14. If MRC had fully complied with the instructions in AT&T's March 7, 2001, letter and ceased providing terminating access to AT&T, end users presubscribed to AT&T would have been unable to make long distance calls to MRC customers over AT&T's network.

15. AT&T should be penalized in the amount of $50,000 for its violations of statutes and Commission orders.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controversial. It is supported by information contained in the parties' testimony and the Commission files and records regarding this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 2-10

These findings of fact, which summarize the most important business transactions between the parties from 1999 through June 2001, are essentially uncontradicted. They are supported by the testimony of Public Staff witness Garrison and AT&T witness Taggart.

Public Staff witness Garrison testified that on March 7, 2001, AT&T wrote to MRC and asserted that it had neither ordered nor desired access service from MRC and had no obligation to pay any bills for access service rendered by MRC. In its letter AT&T informed MRC that it was to cease routing traffic to AT&T's network; that it was not to complete any calls from AT&T's network that were intended for MRC customers; that it was not to presubscribe any of its customers to AT&T; and that it should assist any of its customers already presubscribed to AT&T with changing their long distance service provider. On April 25, 2001, MRC partially complied with AT&T's demands. Except for toll-free calls, MRC ceased allowing calls originating from its customers to be routed to AT&T's network, and it directed its customers who were presubscribed to AT&T to find another long distance carrier. However, contrary to AT&T's instructions, MRC continued to complete calls from AT&T's network to its own customers. MRC resumed routing calls originating from its customers to AT&T's network on June 26, 2001.

On cross-examination, witness Garrison testified that MRC began providing access service to AT&T in November 1999, and that it sent its first bill for access charges, covering about six months of service, to AT&T in December 2000. He testified about MRC's March 27, 2001, letter to AT&T, in which MRC refused to block calls to and from AT&T's network as AT&T had demanded, and the subsequent letters included in AT&T Composite Exhibit WJT-3, in which MRC unsuccessfully sought payment for the access services it had provided. Witness Garrison also stated, in his rebuttal testimony, that MRC's intrastate access charges were equal to the rates charged by its affiliated ILEC, MEBTEL, Inc.

AT&T witness Taggart testified that since enactment of the federal Telecommunications Act of 1996, AT&T had been concerned about the ability of CLPs to charge high rates for access services. AT&T has adopted a policy of ordering access services only after reaching agreement with CLPs on rates and other terms and conditions, and it notified MRC of this policy by letter dated April 29, 1999. MRC nevertheless began sending traffic to AT&T and billing AT&T for access services, without having received an order for services from AT&T. AT&T objected to MRC's access rates, because they were substantially higher than the composite ILEC access rates for North Carolina. On March 7, 2001, witness Taggart sent MRC the letter admitted in evidence as AT&T Exhibit WJT-2. MRC responded with the series of letters comprising AT&T Composite Exhibit WJT-3, and on April 25, 2001, MRC began blocking its customers' access to the AT&T network.

Neither witness contradicted the other's testimony as to these basic underlying facts. The parties' disagreements relate to the reasons why certain actions were taken, the effect of those actions upon the customers of AT&T and MRC, and the legal implications of those actions. These issues are addressed in Findings of Fact Nos. 11-15 and the Commission's discussion of those findings.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

This finding of fact, which relates to the responsibility of AT&T for the actions of MRC in blocking its customers' access to AT&T's long distance network, is based on the testimony of Public Staff witness Garrison and AT&T witness Taggart.

Public Staff witness Garrison testified that in its March 7, 2001, letter to MRC, AT&T specifically directed MRC to discontinue delivering telephone traffic to AT&T's network and completing calls received from AT&T's network. The only reason MRC blocked its customers' calls to AT&T was because it had been ordered by AT&T to do so. Consequently, it is appropriate to hold AT&T responsible for the fact that its customers were unable to place calls over its network.

AT&T witness Taggart emphasized that it was not AT&T, but MRC, that blocked calls placed by MRC customers from reaching AT&T's network. AT&T could not have blocked these calls, because it does not have facilities capable of distinguishing calls originated by MRC from calls originated by other CLPs or ILECs. Calls from CLPs and ILECs are delivered to AT&T together, in an intermingled fashion, at the tandem switch where its network connects with the local network. Witness Taggart testified that when he sent his letter of March 7, 2001, to MRC, he did not intend for MRC to follow his instructions literally and discontinue all access services to AT&T. Instead, he intended to initiate a negotiating process that would enable the parties to reach agreement on mutually acceptable access rates. This should have been clear from the final paragraph of his letter, in which he invited MRC to enter into negotiations. Moreover, witness Taggart testified, his letter did in fact lead to negotiations between AT&T and MRC. This is evident from MRC's letter of March 27, 2001, (pages 1-2 of AT&T Composite Exhibit WJT-3), in which it refused to discontinue access service as AT&T had directed, and its letter of April 24, 2001, (page 3 of AT&T Composite Exhibit WJT-3), in which MRC stated that it would discontinue access services unless AT&T made a partial payment for access services previously billed. According to witness Taggart, MRC blocked its customers' calls to AT&T's network solely because of AT&T's failure to pay for access service -- not because of the instructions in AT&T's March 7, 2001 letter.

The issue here is reasonably clear-cut. From April 25 through June 26, 2001, AT&T's customers who purchased local service from MRC were deprived of the ability to place long distance calls over AT&T's network. Can AT&T be held legally responsible for the blocking of these calls, even though the physical steps necessary to block them were taken by MRC? AT&T contends that the sole responsibility for blocking the calls must rest upon MRC, since MRC exercised its own independent judgment in deciding to block them. The Public Staff contends that through its failure to pay for access services received from MRC, and through its instructions to MRC in the March 7 letter, AT&T induced MRC to block the calls, when MRC would not otherwise have done so. Consequently, even if MRC bears some responsibility for blocking the calls, AT&T is also responsible, under the ancient legal doctrine *Qui facit per alium facit per* se -- one who acts through another acts for himself.

The Commission finds that the Public Staff's position is on balance more persuasive than that of AT&T. AT&T, through its counsel's cross-examination and witness Taggart's testimony, took the position that MRC's decision to block the calls of AT&T's customers must have been based on one or the other of two possible causes. Either the decision was caused by AT&T's nonpayment of MRC's access bills -- in which case AT&T cannot be held responsible -- or it was caused by AT&T's March 7 letter. AT&T further contended that in light of the lapse of time between the March 7 letter and the blocking on April 25, and the negotiations between MRC and AT&T during the interim, the letter cannot reasonably be viewed as the cause of MRC's decision.

AT&T's reasoning is illogical and unpersuasive. In the first place, there is no basis for suggesting that MRC's decision must be attributed to one and only one cause. Common sense suggests that both the March 7 letter and AT&T's nonpayment of access bills were factors in MRC's decision to block calls to AT&T's network. Likewise, there is no merit to the suggestion that AT&T must be relieved of responsibility for the blocking of its customers' calls if MRC's decision to block the calls was based (in whole or in part) on AT&T's nonpayment of access bills. Indeed, as every regulated utility knows, the logical result of nonpayment of bills is cessation of service. AT&T's March 7 letter and its decision not to pay MRC's access bills were both designed to achieve a single purpose. As witness Taggart indicated in his testimony, AT&T did not want to receive or pay for access services from MRC, because it believed that MRC's access rates were too high. AT&T could not unilaterally block the calls delivered to its network by MRC, because its equipment did not have the capability to distinguish between calls coming from MRC and calls coming from other local providers. Consequently, AT&T had to induce MRC to block the calls. When AT&T began receiving access bills from MRC in December 2000, it refused to pay them. When this did not result in MRC's discontinuing its access services, AT&T took the more aggressive step of sending MRC the March 7 letter and demanding that MRC stop delivering calls to its network. Ultimately, the combination of these two steps produced the desired effect; on April 25, MRC began blocking its customers' access to AT&T's network.

Clearly, MRC never had any desire to prevent its customers from making calls over AT&T's network. On the contrary, it had every reason to make the facilities of AT&T, the nation's largest long distance carrier, available to its customers. Had it not been for the pressure exerted by AT&T through its March 7 letter and its failure to pay MRC's access bills, there is no evidence to suggest that MRC would never have blocked the calls. AT&T used MRC as its instrumentality to bring about the cessation of AT&T's long distance service to its customers who received local service from MRC. Consequently, even though it was MRC who physically pressed the computer keys necessary to block these customers' calls, AT&T bears legal responsibility for terminating their service.

AT&T contended at the hearing that it never actually intended to have its customers' service blocked, but only wished to begin the process of negotiating for lower access rates. Ultimately, AT&T noted, it did enter into an agreement with MRC reducing access charges and restoring its customers' access to its network. The Commission notes that even though the final paragraph of the March 7 letter contains a vague reference to negotiations, the document as a whole does not read like a letter designed simply to begin negotiations; on the contrary, it brusquely commands MRC to discontinue all access service at once. It may well be that AT&T intended the letter to serve two purposes: it was a command to discontinue access, and it was also a hint at willingness to negotiate on a prospective basis under AT&T's terms. But even though AT&T was willing to negotiate with MRC, it should not have unilaterally resorted to such tactics as refusing to pay for services it had received, or commanding MRC to block service to AT&T's own customers. When AT&T chose to negotiate in this fashion, it took the risk that MRC would take its letter literally and eventually carry out its commands or at least a part of them. It is unseemly and inequitable for AT&T to attempt to avoid responsibility for the very actions it commanded MRC to take.

The Commission does not mean to imply that MRC was completely blameless in this matter or that it would not have been more desirable for more direct evidence of motivations and intentions to have been presented such as from Mr. Trey Judy of MRC, who was at the hearing but was not called. The Commission is saying, however, that the Public Staff was able to prove by a preponderance of the evidence and reasonable inferences from the evidence that AT&T was legally responsible for using MRC as its instrumentality to block access by AT&T's customers to AT&T's own long distance network.

In any event, MRC's sins were not the issue, inasmuch as MRC had been dismissed a party on December 28, 2001, on the motion of the Public Staff and without objection from AT&T. The issue is about AT&T's responsibility for this affair. As noted above, the March 7, 2001, letter was extraordinary for its brusque and demanding tone. Even the opening for negotiations in the letter made plain that no concessions were to be presumed. It is entirely understandable that, faced with such an ultimatum, a company might first resist and then temporize. The ones left in the lurch are, of course, the customers; an unacceptable result not to be countenanced by the Commission.

Finally, the Commission notes that this entire show cause proceeding could have been avoided if AT&T had resorted to the Commission's complaint procedure rather than resorting to "self-help." Indeed, when AT&T believed that BellSouth's access rates were too high, it brought a complaint to this Commission; and the result was that the access rates were substantially lowered. The complaint procedure is part of the "rule of law," and companies should use it rather than taking actions that needlessly victimize customers.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 12

This finding, which should be viewed in the strict sense as a conclusion of law rather than a finding of fact, is supported by the preceding findings of fact and by the testimony of Public Staff witness Garrison and AT&T witness Taggart. It relates to the issue of whether the blocking of access by AT&T's customers to its long distance network violates certain provisions of North Carolina law.

Public Staff witness Garrison testified that by directing MRC to cease routing traffic to its network, AT&T abandoned its customers who received local service from MRC, without having obtained authorization from the Commission to do so. This constituted a violation of G.S. 62-118(a), which provides (emphasis added): "[U]pon finding that public convenience and necessity are no longer served, or that there is no reasonable probability of public utility realizing sufficient revenue from a service to meet its expenses, the Commission shall have power, after petition and notice, to authorize by order any public utility to abandon or reduce such service."

Witness Garrison further testified that AT&T violated G.S. 62-131(b), which requires every public utility to furnish adequate, efficient and reasonable service. After their access to AT&T's network was blocked, AT&T's customers could not make long distance calls except by changing long distance carriers or using other carriers' networks on a casual-dialed basis. This amounted to inadequate and unreasonable service on AT&T's part.

Witness Garrison testified that by denying access to its network to its customers who took local service from MRC, while continuing to provide its regular service to its other customers, AT&T violated G.S. 62-140(a), which makes it illegal for a public utility to subject any person to any unreasonable prejudice or disadvantage. In addition, AT&T violated the Commission's order of August 6, 1990, in Docket No. P-100, Sub 72, which requires AT&T to continue to provide statewide originating and terminating long distance service and not to suspend or withdraw service without prior Commission approval.

AT&T witness Taggart testified that since MRC had exercised its independent judgment in deciding to block its customers' calls to AT&T's network, any violations of law resulting from the blocking were committed by MRC and not by AT&T. In addition, he testified that by directing MRC to block these calls, AT&T was exercising its right under federal law to avoid purchasing access services from MRC using the procedure authorized by the Federal Communications Commission in *MGC v. AT&T*[1] In that case the FCC held that AT&T had the right to cancel switched access services from a CLP. The logical inference drawn by AT&T from that ruling is that an IXC may also refuse to order such services in the first instance. MRC had begun providing access services to AT&T without AT&T's knowledge, and in order to avoid being obligated to purchase and pay for these services, AT&T had to instruct MRC to stop providing them. In its March 7 letter, AT&T gave these instructions to MRC in the clear and unambiguous manner required by *MGC v. AT&T.* AT&T contended that if it is not allowed to proceed in this manner, it will be unable to protect itself against CLPs that charge exorbitant rates for access services.

For several reasons, the Commission doubts that AT&T's argument that its March 7 letter was authorized by the FCC's *MGC v. AT&T* decision is well supported. First, the issues in this case are issues of state law rather than federal law. The *MGC v. AT&T* case involved interstate access service, and it was decided by the FCC under federal law -- specifically, the federal Communications Act. In contrast, this case involves intrastate access service and is governed by North Carolina law. The statute relevant to this issue is G.S. 62-131(b), requiring that utilities furnish reasonable and adequate service. The FCC's rulings on interstate access charges and interconnection obligations do not preempt state commissions from deciding issues relating to intrastate access charges, interconnection obligations and service adequacy under state law.

Second, even if the *MGC v. AT&T* decision were controlling in this case, AT&T failed to follow the guidelines laid down by that ruling in sending its March 7 letter to MRC. As pointed out by witness Garrison, *MGC v. AT&T* imposed more requirements on an IXC than simply providing unambiguous notice to a CLP that the IXC no longer desires to receive access service. The FCC also noted that an IXC may not ignore the interests of the customers it shares with the local provider; it must take affirmative steps to assist them in transferring to other long distance providers. In this case, AT&T took no such affirmative steps to assist its customers. Indeed, AT&T made no attempt to even identify these customers (*e.g.*, by asking MRC to provide a list of them), much less assist them in changing carriers. Thus, even if the Commission were to accede to AT&T's argument that *MGC v. AT&T* is controlling, since AT&T failed to comply with that decision, the Commission would still conclude that AT&T has failed to furnish reasonable and adequate service.

Nor is *MGC v. AT&T* the last word. The FCC has attempted to clarify its views on an IXC's obligation to accept access service from a CLP -- and the FCC's most recent ruling on the subject provides useful guidance to this Commission in establishing state policy on this issue. In its *Access Charge Order,*[2] issued after AT&T sent its March 7 letter to MRC, the FCC established a "safe harbor" access charge rate for CLPs and held that any access charge rate at or below this rate will be presumed reasonable. In contrast, any rate in excess of the safe harbor

[1] MGC *Communications, Inc. v. AT&T Corp.*, File No. EAD-99-002, Memorandum Opinion and Order, FCC No. DA 99-1395 (Comm. Car. Bur. released July 16, 1999).

[2] *Access Charge Reform -- Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, FCC 01-146 (released Apr. 27, 2001).

rate will be valid only if the CLP demonstrates its reasonableness. The FCC held that an IXC must accept and pay for access service whenever it is provided by a CLP at a "presumptively reasonable" rate, i.e., one at or below the safe harbor rate. In paragraph 94 of the *Access Charge Order* the FCC stated (footnote omitted):

> When an IXC's end-user customer attempts to place a call either from or to a local access line, that customer makes a request for communication service -- from the originating LEC [local exchange carrier], the IXC and the terminating LEC. When that customer attempts to call from and/or to an access line served by a CLEC [competing local exchange carrier] with presumptively reasonable rates, that request for communications service is a reasonable one that the IXC may not refuse . . . . . .

Overall, we believe that the FCC's *Access Charge Order* is better reasoned and more persuasive than the *MGC v. AT&T* ruling. The *Access Charge Order* properly takes into account the importance of maintaining universal connectivity. The public switched telephone network is important to national unity, and to the maximum extent practicable, every telephone customer in the nation should be able to call every other customer. When an IXC can pick and choose the CLPs with which it will do business, the public switched telephone network becomes fragmented, and universal connectivity is lost. Moreover, if IXCs could freely choose to connect with some CLPs but not others, the ability of CLPs to remain in business and offer competitive alternatives to ILEC service would be adversely affected. When a customer attempts to place an intrastate long distance call, that customer implicitly requests service from the originating LEC, the IXC and the terminating LEC. If the IXC refuses the customer's request by failing to carry the call (except for valid reasons such as nonpayment of the customer's bill), it is not providing reasonable and adequate service as required by G.S. 62-131(b).[1]

As can be seen from the above discussion, the federal law, which pertains to interstate access charges, can perhaps most charitably be viewed as being in a process of evolution. It is also somewhat beside the point in the instant case (aside from the fact that this case deals with intrastate access charges), because the essential question is not whether AT&T might or might not have an argument that MRC was charging excessive access rates but rather what AT&T chose to do about it. AT&T chose self-help when it should have chosen legal process.

[1] The FCC held that the *Access Charge Order* would be applicable on a prospective basis only. Subsequently, in *AT& T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues,* CCB/CPD Docket No. 01-02, Declaratory Ruling, FCC No. 01-313 (released October 22, 2001) *(Declaratory Ruling,* the FCC sought to apply the principle at issue here - the obligation of an IXC to accept access service from any CLP with presumptively reasonable rates - on a retroactive basis. Counsel for AT&T pointed out at the hearing that the *Declaratory Ruling was* vacated in *AT&T Corp.* B. *FCC'* 292 F,3d 308 (D.C. Cir. 2002). The D.C. Circuit's basis for vacating the *Declaratory Ruling was* that it was not supported by section 201 of the federal Communications Act, which was the only section the FCC referenced in its ruling. The court declined to consider whether the ruling would have been valid if the FCC had also referenced section 251 of the Act. as it did in the *Access Charge Order.* These complexities of federal law are irrelevant to the case now before this Commission. The Commission is applying state law, not federal law and is not relying upon either the federal Communications Act or the Access Charge Order as controlling legal authority. The reasoning of the Access Charge *Order* is instructive, and the Commission can properly take that reasoning into account, regardless of whether a ruling related to (but different from) the *Access Charge Order was* vacated on technical grounds.

An IXC is not helpless to protect itself against CLPs that charge exorbitant rates. If an IXC believes that a CLP's access rates are unreasonable, it is free to file a complaint against the CLP under G.S. 62-73 or 62-74, seeking to have the rates reduced to a reasonable level. If the IXC believes that the rates are extremely excessive and must be reduced immediately to avoid irreparable harm, it can request an interim rate reduction, or expedited handling of its complaint. The Commission will take such a request into consideration and respond appropriately.

AT&T could have filed a complaint against MRC, asserting that MRC's access rates were in excess of a reasonable level, but it chose not to do so. Instead, it resorted to self-help, using its March 7 letter and its nonpayment of MRC's access bills to induce MRC to cease providing access services. After April 25, 2001, when MRC customers requested service from AT&T by attempting to place calls over AT&T's network, AT&T was -- through its own efforts -- unable to respond to the customers' requests by completing the calls. AT&T thus failed to provide the customers with reasonable and adequate service as required by G.S. 62-131(b).

AT&T's contention that it is not responsible for the blocking of calls to its network, because MRC exercised its own independent judgment in blocking the calls, has been considered and rejected in the discussion of Finding of Fact No. 11 above.

The Commission agrees with Public Staff witness Garrison's analysis of the provisions of law that AT&T violated when it wrongfully ceased accepting access service from MRC. Accordingly, the Commission concludes that AT&T has violated G.S. 62-118(a), 62-131(b), and 62-140(a); and the Commission's order of August 6, 1990, in Docket No. P-100, Sub 72.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13-14

These findings of fact, relating to the impact of AT&T's violations on the customers of AT&T and MRC, are based on the testimony of Public Staff witness Garrison and AT&T witness Taggart.

Public Staff witness Garrison testified that after MRC ceased routing 1+ calls to AT&T's network, MRC's end user customers wishing to be presubscribed to AT&T and use its network were unable to do so. In addition, MRC's end user customers not presubscribed to AT&T who wished to use AT&T's network on a casual call basis were unable to do so. AT&T made no attempt to assist its customers on MRC's system in finding another long distance carrier; in its March 7 letter, it simply directed MRC to assist them. Witness Garrison further testified that if MRC had stopped providing either originating or terminating access to AT&T, as AT&T had directed it to do in the March 7 letter, there would have been a detrimental effect on all AT&T customers -- not just those who received local service from MRC. All customers who had chosen AT&T as their PIC, wherever they were located, would have found themselves unable to make a 1+ call to any customer receiving local service from MRC.

AT&T witness Taggart did not contradict witness Garrison's testimony on these matters. He testified that because AT&T had not entered into a "CARE relationship" -- a Customer Account Records Exchange agreement -- with MRC, AT&T could not identify which of its customers were located on MRC's system. For this reason AT&T could not notify these customers that they would no longer be able to place calls over AT&T's network, or assist the customers in finding other long distance service. Witness Taggart acknowledged that AT&T did not contact MRC and ask MRC to identify which of its customers were presubscribed to AT&T.

Since the witnesses did not disagree on this issue, the Commission finds the facts to be in accordance with their testimony.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 15

This finding, which, like Finding No. 13, should be viewed in the strict sense as a conclusion of law rather than a finding of fact, relates to the amount of the penalty to be imposed on AT&T pursuant to G.S. 62-310(a) for its violations of law. It is supported by the preceding findings of fact and, in part, by the testimony of Public Staff witness Garrison.

Witness Garrison testified that at the time of AT&T's violations, MRC had 14 customers who were presubscribed to AT&T and suffered the primary impact of the violations. The violation of G.S. 62-118(a) (unauthorized abandonment of service) was a one-time occurrence, but the violations of G.S. 62-131(b) (unreasonable and inadequate service) and G.S. 62-140(a) (unreasonable discrimination) lasted for 62 days, with each day constituting a separate offense under G.S. 62-310(a). By assessing the maximum amount of $1,000 for each violation (14 violations of G.S. 62-118(a); 62 violations of G.S. 62-131(b) for each of 14 customers, for a total of 868; and 62 violations of G.S. 62-140(a) for each customer, for an additional 868) the Public Staff could theoretically have proposed a total penalty of $1,750,000. However, witness Garrison recommended a penalty of $100 per offense for the violations of G.S. 62-131(b) and 62-140(a), together with a $1,000 penalty for each violation of G.S. 62-118(a). He did not propose any additional penalty for AT&T's violation of the Commission's order in Docket No. P-100, Sub 72. The result was a recommended penalty amounting to $187,600: $86,800 for the violations of G.S. 62-131(b), $86,800 for the violations of G.S. 62-140(a), and $14,000 for the violations of G.S. 62-118(a).

AT&T contended that it had not committed any violations, but it did not address the amount of the penalty to be imposed in the event that violations were found.

The Commission believes that AT&T's violations were serious but notes only 14 customers were directly impacted by AT&T's violations. Accordingly, the Commission believes a more appropriate overall penalty is $50,000. This represents a penalty of $23,000 for violations of G.S. 62-131(b); $23,000 violations of G.S. 62-140(a); and $4,000 for violations of G.S. 62-118(a). It proportionately reduces the penalties from those recommended by the Public Staff.

Notwithstanding the Commission's policy of limiting strict regulation of interexchange carriers, as allowed under G.S. 62-110(b), IXCs are still public utilities. They are "affected with the public interest," as G.S. 62-2(a) makes clear, and they may not disregard their obligation to operate their systems in the interests of their customers. In an effort to reduce its operating expenses by a relatively insignificant amount, AT&T disregarded the interests of its customers, and such conduct should be penalized.

IT IS, THEREFORE ORDERED that AT&T pay the sum of $50,000 to the Commission no later than 20 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of October, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

pb092602.01

Commissioner Sam J. Ervin, IV dissents.

DOCKET NO. P-140, SUB 79

COMMISSIONER ERVIN, DISSENTING. Although I agree with much of the legal analysis and a number of the policy conclusions adopted by the majority and although I share the majority's distaste for the tactics employed by both AT&T and Madison River, I am unable to conclude that the Public Staff has met its burden of proving by the preponderance of the evidence that Madison River should be deemed to have acted as AT&T's agent when Madison River severely limited access to AT&T's long distance network. Since this finding is critical to the majority's decision that AT&T violated various provisions of North Carolina law in its dealings with Madison River and should be penalized for those violations, I respectfully dissent from the majority's finding of liability and its decision to order AT&T to pay a penalty of $50,000.00.

The majority's ultimate conclusion is that AT&T violated G.S. 62-118(a), G.S. 62-131(b), G.S. 62-140(a), and the provision of the Order Revising Capped Rate Plan And Denying Request For Phase II Proceeding entered by the Commission in Docket No. P-100, Sub 72, on August 6, 1990 (the August 6, 1990, order), that required AT&T to continue to serve all areas of North Carolina by inducing Madison River to prevent its customers from presubscribing to AT&T as their primary interexchange carrier and otherwise limiting access to AT&T's network. A careful analysis of each of these statutes and the August 6, 1990, order indicates, as the majority appears to acknowledge, that the existence of a violation hinges upon a finding that the conduct of the alleged violator actually caused the result forbidden by law. For example, G.S. 62-118(a) provides that, "[u]pon finding that public convenience and necessity are no longer served, or that there is no reasonable probability of a public utility realizing sufficient revenue from a service to meet its expenses, the Commission shall have power, after petition and notice, to authorize by order any public utility to abandon or reduce such service." In other words, G.S. 62-118(a) prohibits the abandonment of service by a public utility without Commission authorization. Duke Power Company v. City of High Point, 22 N.C. App. 91, 205 S.E.2d 774 (1974), cert. den. 285 N.C. 661, 207 S.E.2d 752 (1974). Similarly, G.S. 62-131(b) provides that "[e]very public utility shall furnish adequate, efficient and reasonable service." Put another way, G.S. 62-131(b) precludes the provision of inadequate or inefficient service by a public utility.

State ex rel. Utilities Commission v. Morgan, 277 N.C. 255, 177 S.E.2d 405 (1970), aff'd on reh., 278 N.C. 235, 179 S.E.2d 419 (1971). Moreover, G.S. 62-140(a) provides, in pertinent part, that "[n]o public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage" or "[e]stablish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service." Thus, G.S. 62-140(a) expressly prohibits unreasonably discriminatory conduct by a public utility. Finally, the August 6, 1990, order explicitly provides "[t]hat AT&T shall continue to provide statewide originating and terminating interLATA long-distance service in North Carolina and shall not, without prior Commission approval, suspend or withdraw service from any geographic area of the State." In re Investigation to Consider Whether Competitive Offerings of Long-Distance Telephone Service Should be Allowed in North Carolina and What Rules and Regulations Should be Applicable to Such Competition if Authorized, Docket No. P-100, Sub 72, Order Revising Capped Rate Plan And Denying Request For Phase II Proceeding, Eightieth Report of the North Carolina Utilities Commission: Orders and Decisions 59, 75 (1990). As a result, the August 6, 1990, order prohibits AT&T from failing to provide service in any geographic area in North Carolina without prior Commission authorization. At bottom, each of the statutory prohibitions and ordering clauses at issue here necessarily implicates the conduct of the public utility in question.

I agree that each of these sources of legal authority is potentially relevant to AT&T's alleged conduct. Had the Public Staff succeeded in demonstrating by the preponderance of the evidence that AT&T abandoned the provision of service to its customers without Commission approval, failed to provide adequate service to its customers, unreasonably discriminated against certain of its customers, or failed to provide service in a particular geographic area, I would join the majority's decision without hesitation. Any such conduct would be contrary to AT&T's continuing responsibilities as the long distance carrier of last resort for many North Carolinians. Instead, my failure to join in the majority's decision stems almost exclusively from my disagreement with the factual finding that is the fundamental predicate for the majority's decision.

The present proceeding was initiated by the Public Staff, which petitioned the Commission to order AT&T to show cause why it should not be penalized for violating G.S. 62-118(a), G.S. 62-131(b), and G.S. 62-140(a) and why the Commission or some other properly authorized body should not file a complaint against AT&T with the Federal Communications Commission.[1] The Commission issued the requested show cause order on July 18, 2001, effectively setting the present proceeding for hearing as a complaint. According to G.S. 62-75, "the burden of proof shall be upon the complainant" in all cases not initiated by the Commission itself.[2] By seeking relief from AT&T, the Public Staff assumed the burden of proving all facts

[1] Neither the Public Staff's initial or amended pleading made any reference to alleged violations of the August 6, 1990, order.

[2] Although nothing in the literal language of G.S. 62-75 specifies the exact burden of proof to be applied in Commission proceedings, the Supreme Court of North Carolina has held that civil burden of proof rules should be applied in administrative proceedings. In re Elkins, 308 N.C. 317, 302 S.E.2d 215, reh. den., 308 N.C. 681, 311 S.E.2d 590 (1983); In re Rogers, 297 N.C. 48, 253 S.E.2d 912 (1976). As a result, I believe that the preponderance of the evidence standard is applicable to Commission proceedings, and this conclusion is consistent with prior Commission practice.

essential to the successful maintenance of its claim. State ex rel. Utilities Commission v. Nello L. Teer Company, 266 N.C. 366, 146 S.E.2d 511 (1966). As a result, the Public Staff must prove by the preponderance of the evidence that AT&T caused the end results condemned by G.S. 62-118(a), G.S. 62-131(b), G.S. 62-140(a), and the August 6, 1990, order in order to prevail in this proceeding.

The undisputed record evidence indicates that AT&T did not physically disconnect, block, or otherwise refuse to provide service to any prospective or existing customer. On the contrary, the record clearly reflects that the only service interruptions experienced by AT&T customers stemmed from actions physically taken by Madison River. For that reason, the majority cannot and does not find that AT&T committed any act that directly violated any of the relevant statutory provisions or ordering clauses itself. In order to justify its decision that AT&T should be penalized, the majority essentially concludes that Madison River acted at the behest of AT&T when it prevented Madison River customers from utilizing AT&T's network to complete interexchange calls. In other words, the majority attributes Madison River's conduct to AT&T. Although I do not dispute the possibility that a public utility can be vicariously liable for the actions of its agent and that the necessary agency can be implicit as well as express, I do not believe that Madison River's conduct should be attributed to AT&T given the evidence presented in the present proceeding.

The evidence received at the evidentiary hearing was presented through the testimony of John T. Garrison, Jr., a Public Utilities Engineer with the Public Staff, and William J. Taggart, III, the Division Manager for CLEC Business Development and Management with AT&T Corporation. No Madison River representative was called to the witness stand. In addition to presenting live testimony, the parties introduced copies of correspondence exchanged during the relevant time period. A careful analysis of this evidence persuades me that the Public Staff has not met its burden of proving that Madison River's conduct should be attributed to AT&T for purposes of a finding of liability in this case.

The correspondence between the parties extended over a period of nearly two years and clearly sets out their relative positions. On April 26, 1999, Toni LaPenna, a Manager of Supplier Relations with AT&T, sent a letter to Bruce Becker of Madison River indicating that AT&T had "received information that [Madison River] may be planning to offer, or is already offering, local exchange service in one or more cities;" that Madison River's customers "may . . . want to access AT&T's switched network, for which you will be charging originating and terminating access;" that it was "AT&T's policy to pay solely for access service that it orders;" that AT&T would "issue an order through an Access Service Request (ASR) to" Madison River "once you have completed AT&T's supplier set-up processes (e.g., establishing Customer Account Record Exchange (CARE) and bill processing capabilities)" and "AT&T has agreed to the switched access prices proposed by" Madison River; and that AT&T expected "that these prices will be competitive with the incumbent LEC in each area that your company will be offering service." [AT&T Ex. WJT-1]. After Madison River began providing access service to AT&T in November, 1999, and began billing AT&T for access services on December 5, 2000 [T. pp. 70, 80], Mr. Taggart sent a letter to Trey Judy, Madison's Director of Regulatory Affairs, dated March 7, 2001, in which AT&T acknowledged receiving invoices for switched access service from Madison River and stated that "AT&T has not ordered originating or terminating switched access services from Madison River" so that "AT&T is not obligated to pay [Madison River] for the access service on the invoices." In addition, Mr. Taggart stated that Madison River should "immediately cease routing all traffic to AT&T's network;" "not complete any calls terminating from AT&T's network that are intended" for Madison River customers; "not.... presubscribe any of its local exchange customers to AT&T's interexchange services;" and notify all customers presubscribed to AT&T on Madison River's network that Madison River "is not authorized to presubscribe customers to AT&T" and "assist them in selecting another interexchange carrier." In the event that Madison River "would like to discuss the possibility of mutually acceptable arrangements between the parties," Mr. Taggart requested Madison River to execute an enclosed confidentiality agreement and return it to AT&T. [AT&T Ex. WJT-2]. On March 27, 2001, Michael T. Skrivan, Madison River's Vice President Revenues, sent a response to Mr. Taggart in which Mr. Skrivan indicated that the March 7, 2001, letter "requests and/or instructs MRC to perform a number of activities which we consider to be violations of federal law," declined to comply with Mr. Taggart's instruction that Madison River cease providing access service to AT&T, and returned two executed copies of the confidentiality agreement. [AT&T Comp. Ex. WJT-3, pp. 1-2]. On April 24, 2001, Mr. Skrivan sent another letter to Mr. Taggart in which he noted that "[Madison River] has provided monthly bills for services rendered based on actual usage and using [Madison River] rates filed in its state and federal tariffs;" that, "[t]o date, AT&T has not paid any bills and has requested termination of service; that, "[e]ffective at 5 pm on Wednesday, April 25, 2001, all access services to AT&T will be terminated" unless appropriate payment was made; and that "[Madison River] customers currently presubscribed to AT&T will be apprised of the situation and provided with a list of alternatives." [AT&T Comp. Ex. WJT-3, p. 3]. Finally, on May 4, 2001, Mr. Judy sent Mr. Taggart a letter in which he indicated that, based "[u]pon AT&T's stated intention not to pay any access charges, and based on the elapse of the payment due date requirement in the April 24, 2001, memo, [Madison River] has disconnected AT&T's originating toll service." [AT&T Comp. Ex. WJT-3, pp. 4-5]. Although the record does not reflect the terms of the eventual settlement between the parties, Madison River resumed providing access service to AT&T customers on June 26, 2001.

Mr. Taggart explicitly testified that "AT&T did not block traffic from or to Madison River" and "completed all calls that were delivered to AT&T by Madison River and all calls terminated to Madison River's local service customers." [T. p. 96]. Mr. Taggart further stated that "AT&T made its service available to any customer in North Carolina at all times from March through June 2001;" that "AT&T did not at any time take any action to block or prevent the completion of calls to or from Madison River's local service customers;" that, "[i]f any Madison River customer was unable to utilize AT&T's service, it was not due to the actions of AT&T;" that "AT&T processed each and every call it received that was originated by or intended for termination to a Madison River local customer;" and that "AT&T does not have the ability to block traffic coming from or to Madison River." [T. pp. 97, 110]. At the time that he sent the March 7, 2001, letter, Mr. Taggart wanted Madison River "to enter into negotiations with" AT&T for the purpose of working out a "switched access agreement." [T. p. 126]. Mr. Taggart testified that AT&T hoped at that time that "it would not come to" the point that Madison River "immediately cease[d] routing all traffic to AT&T's network;" that the letter was written as strongly as it was in order to comply with the FCC's MGC Order; and that "the end in mind was a switched access agreement." [T. p. 126].[1] As a result, AT&T denied that it intended for Madison River to prevent its customers from accessing AT&T's interexchange switched network at the time that Mr. Taggart sent the March 7, 2001, letter.

In response to Mr. Taggart's assertion that Madison River, and not AT&T, was responsible for the termination of service to AT&T customers receiving local service from Madison River, Mr. Garrison urged the Commission to "reject this flawed logic." [T. p. 42]. Mr. Garrison claimed that, "[b]y directing Madison River to cease providing it with access service, AT&T was clearly withdrawing service from its customers who were receiving local exchange service from Madison River." [T. p. 42]. According to Mr. Garrison, "Madison River blocked calls to AT&T for one reason only; because AT&T ordered it to do so." [T. p. 42]. Similarly, Mr. Garrison claimed that, "[u]nder the direction of AT&T, Madison River ceased routing calls to AT&T's network," although "[t]he actual physical blocking of the calls was done by Madison River at the direction of AT&T." [T. pp. 48, 49].[2] On the other hand, Mr. Garrison admitted that AT&T did not do "anything" "to block originating traffic from reaching its network from Madison River local subscribers" except "write the March 7, 2002 letter." [T. pp. 49-50]. In addition, Mr. Garrison admitted that, "[h]ad Madison River not undertaken the request of AT&T," "there would have been no abandonment of its customers." [T. pp. 59-60]. Mr. Garrison did not know of "any calls or traffic . . . that was delivered to AT&T, that AT&T

[1] Although the FCC Common Carrier Bureau did hold in MCG Communications, Inc. v. AT&T Corporation, File No. EAD-99-002, Memorandum Opinion and Order ¶¶ 12, 25, 26 (released July 16, 1999) (MGC Order), "that none of the statutes, rules or orders governing equal access, dialing parity or payphone services imposes any obligation on AT&T that would prevent it, should it choose to do so, from rejecting MGC's originating access service," the Bureau further concluded that "a party wishing to terminate service under a tariff [must] explicitly and unequivocally state its intention and act in a manner consistent with that intention;" that AT&T had failed to express its decision to terminate originating access service "in both words and actions that do not admit of the ambiguity that we find surrounded AT&T's actions here;" and that AT&T "failed to take certain {other] steps that . . . . a carrier likely would take if it truly wished to terminate a LEC's originating access service," including "initiating the process of migrating AT&T's and MGC's shared customers to either a new LEC or a new IXC." The FCC affirmed the Bureau's decision. MGC Communications, Inc. v. AT&T Corporation, File No. EAD-99-002, Memorandum Opinion and Order (released December 28, 1999). Although I agree with the majority that the FCC's rules and decisions concerning the termination of originating access service by IXCs are nothing more than persuasive authority in this matter, which deals with intrastate rather than interstate switched access service, and that AT&T cannot successfully rely upon the MGC Order in this proceeding even if the FCC's rules and decisions were binding since AT&T failed to take adequate steps to protect the interests of its customers, I am persuaded that the MGC Order does tend to explain a great deal about the tone of the March 7, 2001, letter and that the majority places excessive importance upon the tone of the March 7, 2001, letter in reaching its decision to penalize AT&T.

[2] As I understand the record, Mr. Garrison based these assertions exclusively on his interpretation of the March 7, 2001, letter. [T. p. 69]. Although Rule 602 of the North Carolina Rules of Evidence, G.S. 8C-1, Rule 602, provides that "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter," no objection was lodged to that portion of Mr. Garrison's testimony addressing AT&T's mental state, rendering that testimony admissible for whatever probative value it might have. State v. Jones, 293 N.C. 413, 238 S.E.2d 482 (1977); Skipper v. Yow, 249 N.C. 49, 105 S.E.2d (1958).

did not process for completion." [T. p. 67].[1] In response to questions from the bench, Mr. Garrison testified that the Public Staff had not directly asked Madison River "for the reason that it took the actions that it took following receipt of AT&T's letter with respect to blocking access to AT&T's network on a presubscription basis." [T. pp. 85-86]. When Public Staff counsel asked Mr. Garrison on additional direct examination addressing matters raised from the bench whether he had had "discussions with Mr. Judy about the reason why service was disconnected—blocked to AT&T," Mr. Garrison responded that he did not "recall asking him why they blocked." [T. pp. 86-87]. Although Mr. Judy was in attendance at the hearing in response to a subpoena, he was never called to the stand by either party. [T. pp. 84-85].

The majority justifies its conclusions that "AT&T induced [Madison River] to block 1+ calls made by its customers to AT&T's network" and that "AT&T . . . used [Madison River] as its instrumentality in bringing about the partial cessation of access services" by finding that, "[a]lthough [Madison River] alone made the decision to block these calls, AT&T's nonpayment of access charges and its instructions in the March 7 letter were both designed to induce [Madison River] to cease providing access service to AT&T, which [Madison River] neither sought or desired to do." [Rec. Or., p. 4]. In further seeking to explain its decision, the majority states that "[c]ommon sense suggests that both the March 7 letter and AT&T's nonpayment of access bills were factors in [Madison River's] decision to block calls to AT&T's network" and that, "as every regulated utility knows, the logical result of nonpayment of bills is cessation of service." [Rec. Or., p. 7]. Thus, the majority suggests that, since AT&T lacked the technical capability to "distinguish between calls coming from [Madison River] and calls coming from other local providers," "AT&T had to induce [Madison River] to block the calls." [Rec. Or., p. 7]. For that reason, the majority concludes that AT&T first attempted to "induce" Madison River to block access to its network by refusing to pay access bills; that, "[w]hen this did not result in [Madison River's] discontinuing its access service, AT&T took the more aggressive step of sending [Madison River] the March 7 letter and demanding that [Madison River] stop delivering calls to its network;" and that, "[u]ltimately, the combination of these two steps produced the desired effect." [Rec. Or., p. 7]. As a result, the majority concludes that the Public Staff met its burden of proving that Madison River acted as AT&T's agent when it blocked originating switched access traffic from reaching AT&T's network after April 24, 2001.

I am simply not persuaded by the majority's logic, which seems to me to overly truncate the necessary evidentiary analysis and to lack adequate record support. In order for the majority's "inducement" theory to be successful, it seems to me that the Commission would have to find (1) that AT&T genuinely wanted Madison River to stop sending switched access traffic

[1] The record is somewhat unclear as to the extent to which AT&T customers taking local service from Madison River were able to reach AT&T's long distance network on a non-presubscribed basis. At one point, Mr. Garrison testified that AT&T customers could not reach AT&T's network on a casual call basis. [T. p. 26]. On the other hand, Mr. Garrison stated that AT&T customers using Madison River as their local carrier could still place 1-800 or toll free calls to AT&T's network [T. p. 25] and that casual calling remained possible after Madison River blocked access to AT&T's network. [T. p. 62]. Given that the steps taken by Madison River in the aftermath of the April 24, 2001, letter were limited to directing AT&T customers to presubscribe to another long distance carrier, not permitting new end users to presubscribe to AT&T, and no longer permitting calls originating from its customers to be routed to AT&T's network [T. p. 25], it is not clear to me that customers were unable to use AT&T's network on a casual call basis, at least as I understand the term "casual call."

from Madison River local customers to AT&T's network, (2) that AT&T reasonably believed that its actions would produce such a termination of switched access service, and (3) that Madison River blocked service to AT&T's network as a direct consequence of actions which AT&T took for the purpose of achieving that result. The majority does not distinguish between these three factors in its analysis, but I believe that all of them are essential to a finding of liability. On the contrary, the majority may be of the opinion that a showing of bad intent is sufficient, standing alone, to justify the imposition of a penalty, although it does not say so in that many words. Were a showing of intent to be deemed sufficient to justify a decision against AT&T, the Commission would find itself required to intervene every time a party lacked adequately pure motives regardless of the extent to which the result prohibited by law was likely to come to fruition. For that reason, I believe that a finding of liability on the basis of the agency theory adopted by the majority should include a determination that the party found liable intended the prohibited outcome, that the actions in which the party in question engaged were reasonably likely to result in conduct by another party that produced the prohibited harm, and that the actions of the other party actually stemmed from conduct by the party sought to be held liable that were intended to achieve the prohibited result. Although I am unconvinced that the Public Staff has met its burden of proof with respect to the first of these issues,[1] I do not believe that it is necessary for me to resolve this question given the Public Staff's failure to establish the second or third factors by the preponderance of the evidence.

The record is completely devoid of direct evidence that AT&T reasonably expected that Madison River would cease providing originating access to AT&T's interexchange network at the time that it sent the March 7, 2001, letter, which is the only act of AT&T of which the Public Staff complains. The undisputed evidence in the record demonstrates that Madison River initially refused to honor AT&T's demands on the grounds that acting in that manner would be unlawful. In addition, Madison River returned the executed confidentiality agreements to AT&T at the time that it responded to the March 7, 2001, letter, a fact which suggests that Madison River wished to negotiate with AT&T in accordance with AT&T's suggestion. Madison River did not cease providing originating switched access service to AT&T customers for over a month

[1] The majority evidently bases its decision on the intent issue on its analysis of the March 7, 2001, letter and AT&T's failure to pay the switched access bills that it began to receive from Madison River in December, 2000. The language of the March 7, 2001, letter does, as the majority notes, insist that Madison River take certain actions that would have had the effect of blocking access to AT&T's network by Madison River local subscribers. Read literally and in isolation, that letter would tend to suggest that AT&T wanted Madison River to take actions that would, if implemented, have resulted in an outcome forbidden by North Carolina law. On the other hand, Mr. Taggart testified that the language of the March 7, 2001, letter stemmed from the FCC's decision in the MGC Order that a similar letter was insufficiently explicit; that the real purpose of the March 7, 2001, letter was to persuade Madison River to enter into negotiations with AT&T over switched access rate issues; and that he certainly hoped that the decision to send the March 7, 2001, letter would not result in the inability of AT&T customers taking local service from Madison River to reach AT&T's long distance network. Although I found the testimony of Mr. Taggart to be credible at the time that I heard it, the fact that AT&T attempted to comply with the standard set out in the MGC Order implies that AT&T reserved the right to terminate all business relations with Madison River at some point. Under that set of circumstances, I am unable to definitively conclude that AT&T lacked the intent attributed to it by the majority at the time that it sent the March 7, 2001, letter. I am not, however, persuaded that AT&T failed to pay the access bills submitted by Madison River for the express purpose of inducing Madison River to prevent traffic from reaching AT&T's network given the complete absence of any direct evidence to that effect and the fact that refusing to pay disputed bills is a tactic which has been employed in a wide variety of telecommunications and non-telecommunications businesses for perfectly legitimate reasons.

after the delivery of the March 7, 2001, letter. Although the majority references AT&T's refusal to pay the switched access bills that Madison River began sending in December, 2000, as additional grounds for concluding that AT&T intended to induce Madison River to block access to AT&T's network, the record does not contain any direct evidence to the effect that AT&T deliberately failed to pay these bills for the purpose of getting Madison River to cease providing access to AT&T's network, and I am unwilling to make the inference that the majority draws from this aspect of AT&T's conduct given all the surrounding facts and circumstances. In any event, Madison River had a number of other options for dealing with the March 7, 2001, letter and AT&T's refusal to pay for switched access provided by Madison River aside from blocking access to AT&T's network, including making a more active attempt to enter into negotiations with AT&T, bringing suit against AT&T in the courts, or filing a complaint against AT&T with the Commission or the FCC.[1] Under this set of circumstances, I am simply unable to find by a preponderance of the evidence that AT&T reasonably expected that Madison River would act as it did at the time that it sent the March 7, 2001, letter or failed to pay the switched access bills that Madison River began sending AT&T in December, 2000. Although making the inference found in the majority's decision is appealing given my distaste for AT&T's tactics, I am simply unable to find as a matter of fact that AT&T could have reasonably expected Madison River to act as it did when it sent the March 7, 2001, letter and failed to pay the switched access invoices that Madison River began sending to AT&T in late 2000.

Similarly, I am unable to find as a matter of fact that any conduct in which AT&T engaged with the alleged intent of inducing Madison River to cease providing originating switched access service actually produced that result. Although the Public Staff repeatedly asserted that Madison River acted at the express direction of AT&T, an analysis of the record evidence indicates that the Public Staff never directly inquired of Madison River as to the reason for its actions and that the Public Staff's assertions with respect to the motivation for Madison River's conduct rest on its analysis of the March 7, 2001, letter. In view of the Public Staff's failure to make any inquiry of Madison River concerning this subject; the facially credible testimony of Mr. Taggart that the tone of the March 7, 2001, letter stemmed from his efforts to comply with the requirements of the MGC Order rather than a desire that Madison River actually cease providing switched access service to AT&T; and the length of time between the date of the March 7, 2001, letter and the date upon which Madison River blocked access to AT&T's network, I am simply unable to conclude as a matter of fact that Madison River's decision to block access to AT&T's network stemmed directly from conduct in which AT&T engaged that was intended to achieve such a result. As a result, I do not believe that the present record establishes by a preponderance of the evidence that Madison River's actions were undertaken as a result of conduct by AT&T that was intended to induce Madison River to block access to AT&T's network.

[1] The majority insists that AT&T should have initiated a complaint before the Commission against Madison River instead of engaging in "self-help" efforts such as sending the March 7, 2001, letter or refusing to pay disputed switched access bills. [Rec. Or., p. 12]. It seems to me that this logic is equally applicable to Madison River. Even so, the majority never explains why AT&T should be required to initiate litigation against Madison River while Madison River should not be expected to initiate litigation against AT&T. The existence of this option and Madison River's claim that the demands made in the March 7, 2001, letter required it to engage in illegal acts strongly suggest that the initiation of judicial or administrative litigation was as likely, if not more likely, to be the result of AT&T's conduct than what actually occurred.

Although my conclusion that the Public Staff has failed to establish at least two of the three factual predicates for a finding of vicarious liability would be sufficient, without more, to necessitate my decision to dissent from the result reached in the recommended order, there are other incidental portions of the majority's decision that I cannot join. Even though none of these portions of the majority's logic are essential to its ultimate decision of this matter, I am unable to let them pass without some comment given their potential importance in other cases.

Although it correctly states that the matters at issue here involve the application of state rather than federal law, the majority discusses AT&T's reliance on the MGC Order, concludes that AT&T failed to comply with the procedures set out in that decision, and finds that the FCC's decision in In re Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking (released April 27, 2001) (CLEC Access Charge Reform Order), is better reasoned than the MGC Order and "provides useful guidance to this Commission" because the CLEC Access Charge Reform Order "properly takes into account the importance of maintaining universal connectivity." [Rec. Or., pp. 10-11]. Unfortunately, the majority's expression of approval for the CLEC Access Charge Reform Order is difficult to square with the result that it reaches in this proceeding. After concluding "that the combination of the market's failure to constrain CLEC access rates, our geographic rate averaging rules for IXCs, the absence of effective limits on CLEC rates and the tariff system create an arbitrage opportunity for CLECs to charge unreasonable rates," the FCC determined in the CLEC Access Charge Reform Order that "some action is necessary to prevent CLECs from exploiting the market power in the rates that they tariff for switched access services." CLEC Access Charge Reform Order ¶ 34. As a result, the FCC decided to establish "a benchmark level at which CLEC access rates will be conclusively presumed to be just and reasonable." CLEC Access Charge Reform Order ¶ 40. The benchmark access charge rate that the FCC found presumptively reasonable in the immediate aftermath of the CLEC Access Charge Reform Order was the higher of either "2.5 cents per minute, or the rate of the corresponding incumbent carrier," with the "corresponding incumbent carrier" defined as the "incumbent local exchange carrier . . . that would provide interstate exchange access service to a particular end user if that end user were not served by the CLEC." CLEC Access Charge Reform Order ¶ 51; 47 C.F.R. § 61.26(a)(2). Although the majority correctly notes that the "FCC held that an IXC must accept and pay for access service whenever it is provided by a CLP at a 'presumptively reasonable' rate [Rec. Or., p. 11]," it totally overlooks the fact that the Madison River switched access rates in question, which apparently exceed the applicable benchmark rate [T. pp.7-8, 96; AT&T Comp. Ex. WJT-3, pp. 4-5], does not appear to be "presumptively reasonable" as that term is used in the CLEC Access Charge Reform Order.[1] As a result, the majority's decision to penalize AT&T is completely inconsistent with the effect of the FCC decision that it considers "persuasive."[2]

I further disagree with the majority's conclusion that AT&T violated the strictures set out in the August 6, 1990, order.[3] A careful reading of that order indicates that AT&T agreed not to cease providing service in any geographic area in the state without Commission authorization. The record contains absolutely no evidence whatsoever tending to show that the Madison River local customers that the majority finds to have been harmed by AT&T's conduct are located in any specific geographic area. The absence of such evidence precludes a finding that AT&T violated the August 6, 1990, order. As a result, the majority errs by finding AT&T in violation of the August 6, 1990, order as well.

The picture painted by the present record is not very edifying. In essence, the record suggests that AT&T and Madison River played a high stakes game of chicken, with their mutual customers being the ones placed at the greatest risk. I must confess that it is tempting to support the majority's decision to penalize AT&T out of sheer distaste for the tactics that it employed in this instance. Although not strictly in accordance with applicable law, such an outcome might well be just. I do not, however, believe that it would be consistent with a proper application of

[1] The Public Staff argued that the logic of the CLEC Access Charge Reform Order supported a finding of liability because CLEC access charge rates are deemed just and reasonable pursuant to G.S. 62-132. [Pub. St. Br.,p. 10]. In making this argument, the Public Staff overlooks the fact that the presumption of justness and reasonableness created by G.S. 62-132 is only available to rates "established" by the Commission. A rate is "established" for purposes of G.S. 62-132 when it is set by the Commission after a full hearing, appropriate findings and conclusions, and the entry of a formal order. State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976). As a result of the fact that the Commission exempted CLPs from all of the ratemaking provisions of the Public Utilities Act in the aftermath of the enactment of House Bill 161, including G.S. 62-132, In re Local Exchange and Local Exchange Access Telecommunications Competition, Docket No. P-100, Sub 133, Order Setting Out Regulatory Structure for Competing Local Providers and Promulgating Rules, Eighty-Sixth Report of the North Carolina Utilities Commission: Orders and Decisions 110, 164-165 (1996), the access charges assessed by CLPs have not been "established" as that term is used in G.S. 62-132 and are not entitled to a presumption of justness and reasonableness.

[2] The majority distinguishes the decision of the United States Court of Appeals for the District of Columbia Circuit in AT&T Corporation v. FCC, 292 F.3d 308 (D.C. Cir. 2002), on the grounds that it only construed an IXC's obligations under 47 U.S.C. § 201 and did not address the potential impact of the interconnection provisions of 47 U.S.C. § 251. [Rec. Or.,p. 11, ftn. 3]. The majority overlooks the fact that the FCC held in the CLEC Access Charge Reform Order that an IXC has no obligation under either 47 U.S.C. § 201, 47 U.S.C. § 214, or 47 U.S.C. § 251 to purchase access service from any particular local exchange carrier unless it charges "presumptively reasonable" rates. CLEC Access Charge Reform Order ¶¶90-94. As a result, the majority's attempt to find support for its position in federal law must be deemed unsuccessful.

[3] The majority's finding in this respect has no meaningful impact on the outcome of this proceeding, since the majority has not imposed any penalty on AT&T for its alleged violation of the August 6, 1990, order.

the relevant provisions of the Public Utilities Act. As a result, I respectfully dissent from the majority's decision to impose a $50,000 penalty upon AT&T for violations of G.S. 62-118(a), G.S. 62-131(a), and G.S. 62-140(a).[1]

\s\ Sam J. Ervin, IV
Commissioner Sam J. Ervin, IV

[1] As a result of the fact that the FCC held in the CLEC Access Charge Reform Order that nothing in 47 U.S.C. § 201, 47 U.S.C. §214, or 47 U.S.C. § 251 that requires an IXC to purchase originating switched access from a particular LEC that charges "presumptively reasonable" rates; the decision in AT&T Corporation v. FCC, 292 F.2d 308 (D.C. Cir. 2002); and the fact that the majority correctly describes the state of federal law governing this subject as "evolving" [Rec. Or., p. 11], I concur with the majority's implicit decision not to file a complaint against AT&T with the FCC for any interruption in interstate originating access service that resulted from this incident.

DOCKET NO. P-19, SUB 432

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Tariff Filing by Verizon South, Inc. – North Carolina to Bifurcate the MTS Schedule and Withdraw Easy Savings Plan for Residence) ORDER ALLOWING BIFURCATION

BY THE COMMISSION: On March 6, 2002, the Commission issued an Order Requesting Comments in this docket regarding a tariff filing by Verizon South, Inc. (Verizon) considered at the Commission's March 4, 2002 Regular Commission Conference to bifurcate its long distance message telecommunications service (MTS) rate schedule and withdraw its Easy Savings Plan for Residence. In total, the proposed tariff changes would produce an increase in annual gross revenue for Verizon of $469,006. The Commission suspended the tariff filing for 45 days, or until May 2, 2002.

Currently, Verizon has a basic MTS rate schedule that is applicable to all classes of service and is distance- and time-of-day-sensitive. The applicable rate per minute varies by mileage band based on the distance between the calling and called parties. The rates also vary according to the time the call is placed, i.e. day, evening, daytime savings or night/weekend periods. Initial minute rates apply for the first minute of each call, and lower rates apply for additional minutes.

The proposed tariff would establish a separate schedule for residence customers and would leave the current schedule applicable only to business customers. The proposed residence schedule provides a time-of-day sensitive (flat) per minute rate of $.25 per minute for the day period, $.20 per minute for the evening period, and $.15 per minute for the night/weekend period. The current Daytime Savings Period would be eliminated. Verizon argued that the separation is justified because the business and residence calling patterns are different (business customers calling primarily on weekdays, while residential customers call at a variety of different time periods), and it would allow more flexibility to the residential customers. This is not, according to Verizon, unreasonable discrimination.

The principal objections of the Public Staff centered around unreasonable discrimination. No customer should be excluded from a particular long distance rate schedule because of the classification of his or her basic local exchange service. The Public Staff does not object to a new schedule as long as the new schedule and the existing business schedule are available to both residence and business subscribers. The Public Staff noted that the Commission had resisted bifurcation proposals from interexchange carriers in the past. See, ATC Long Distance, Docket No. P-235, Sub 3, March 11, 1992; MCI Telecommunications, Inc., Docket No. P-141, Sub 12, March 8, 1989; and LDDS of Carolina, Inc., Docket No. P-283, Sub 2, August 11, 1992. According to the Public Staff, more recent cases are scarce because companies have accepted the Commission's decisions on this matter.

Comments

The Alliance of North Carolina Independent Telephone Companies (Alliance) supported Verizon's proposed tariff filing because it believes that telecommunications providers should be permitted to market their services in as flexible a manner as possible. Verizon's MTS service faces significant competition, which precludes any material risk to customers from Verizon's proposal. Verizon has offered a rational basis for the rate differential between the two classes of customers. Indeed, there are rate differentials that are commonly accepted between residence and business customers for local service today.

Carolina Utility Customers Association, Inc. (CUCA) stated that, as a general matter, rate bifurcation between business and residential customers should be permitted to the extent that the differentiation is not unduly discriminatory. Such bifurcation may be justified, for example, by usage volumes, time of use, or other use characteristics. Thus, the Public Staff's assertion that bifurcation would be unduly discriminatory is unfounded. Indeed, if a set of services is "inherently the same," it is local service, where the Public Staff supports bifurcation that makes business customers pay much higher rates.

Carolina Telephone and Telegraph Company, Central Telephone Company, and Sprint Communications Company, LP (Sprint) supported Verizon's proposed tariff. Sprint noted that the cases cited by the Public Staff were old cases enacted well prior to the Telecommunications Act of 1996 or even the Commission's December 9, 1993 Ceiling Rate Plan Order, which eliminated much traditional regulation of IXCs. Toll competition in this State is robust, and the bifurcation benefits residential subscribers by developing a set of rates that is easier to understand. Approving Verizon's tariff is not contrary to the law against unreasonable discrimination. See, State ex rel. Utilities Commission v. Carolina Utility Customers Assoc., 323 N.C. 238 (1986) (quantity of service, time of use, manner of service, cost of rendering the services, competitive conditions, consumption characteristics, and the value of the service to each class are all factors to be considered); Utilities Commission v. Oil Co., 302 N.C. 14 (1980); and Utilities Commission v. City of Durham, 282 N.C. 308 (1972).

Verizon argued that the law does not prohibit "discrimination" but only unreasonable discrimination, and the Commission has broad discretion to weigh various factors. Verizon stated that the burden of showing unreasonable discrimination rests with the party alleging it. See, State of North Carolina ex. rel. Utilities Commission and Carolina Power and Light v. Edmisten, et al., 291 N.C. 424, 428; 230 S.E. 2d 647, 650 (1976). Verizon urged that substantial differences justify its tariff modifications as between residential and business customers, such as different residential and business consumption patters and other customer characteristics, historical differences in the respective rate structures (such as the differential in local rates), competitive conditions, and the advent of price plans. Verizon also cited to political and economic factors, as well as its revenue stability, to justify its tariff revisions.

AT&T Communications of the Southern States, LLC and WorldCom, Inc. (AT&T and WorldCom) sounded the themes that the bifurcation does not constitute unreasonable discrimination and is justified by competitive conditions.

BellSouth Telecommunications, Inc. (BellSouth) noted that other states, such as Florida, Alabama, Mississippi, and Kentucky, have approved different rates for business and residential MTS users, and that in each of the above states the rates are lower for the residential customers. It is reasonable that residential and business customers should have different MTS rate schedules to reflect their considerably different calling patterns and habits. In fact, the Commission has already approved different rate schedules for toll and toll-like services, as in certain optional calling plans for business-only customers. The cases cited by the Public Staff are old and not particularly relevant. The statute does not prohibit discrimination, but only unreasonable discrimination; and, given the service characteristics and the level of competition--which even the Public Staff has conceded elsewhere exists for MTS in Verizon's territory--bifurcated schedules are entirely reasonable.

Public Staff Reply Comments

Public Staff, while conceding that calling patterns differ between business and residential customers and that the long distance market has become more competitive, nevertheless reaffirmed its original recommendation to disapprove the bifurcation tariff. The Public Staff pointed out that IXCs have always had the flexibility to offer optional plans to their customers but that the Commission has historically had a policy favoring unified tariffs, and thus these plans, while primarily designed for a specific market segment, have been open to all customers. Despite Verizon's assertion that it could not feasibly bill residence customers for the Easy Saving Plan for Business, the Public Staff noted that two of Verizon's current optional plan offering have no enrollment restrictions. The WatsSaver, Business Plus, and Expanded Local Saver Service optional calling plans that BellSouth asserts were approved for business-only customers are also open.

The Public Staff agreed that local exchange service tariffs are bifurcated, but this is for well-known policy reasons. Both state and federal law recognize that basic local service provides a vital link to essential services, and rates for residential service have been priced lower than business service in order to promote universal service. The public policy rationale for separating residential and business rates for local service simply does not extend to the long distance market.

While the Public Staff acknowledged that the cases it originally cited were no longer completely apposite, the Public Staff insisted that the principle underlying the Commission's decisions in those cases, as well as the historical industry practice, is much broader. That principle is that, absent public policy reasons to the contrary, telephone customers should have the option of selecting among all service offerings if they meet certain criteria related to the service itself, such as volume or time-of-day usage. There is no more justification for providing MTS under separate rate schedules to business and residential customers than there was to provide operator services under separate rate schedules. The transient user experiences the discriminatory effect of rate bifurcation immediately, but the residential customer is also vulnerable, albeit in the longer run, as carriers are free to charge what the market will bear and price themselves out of markets they no longer wish to serve. The Commission has virtually no control over MTS rate levels for price plan companies and for IXCs. There are no rate element or revenue constraints for services in Non-Basic 2 basket, and the Ceiling Rate Plan cap is far above current rates. Despite the availability of competitive choices in the marketplace, there is no guarantee that other carriers will provide message toll service at rates comparable to those previously offered.

The Public Staff reiterated its belief that Verizon's proposed restructuring of its MTS rates is unreasonably discriminatory as between classes of service and there is not a strong policy reason for departing from the longstanding practice of unified tariffs for long distance service. Accordingly, that portion of Verizon's tariff that would bifurcate the MTS schedule should be disapproved.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to allow Verizon to bifurcate the MTS schedule, withdraw the Easy Savings Plan for Residence, and rename and reduce its rates for GTE One Easy Price Plan.

First of all, the Commission believes that the argument that bifurcated rates for long distance service necessarily constitute unreasonable discrimination is without merit. It is well-settled in the law relating to unreasonable discrimination that such considerations as quantity of service, time of use, manner of service, cost of rendering service, competitive conditions, consumption characteristics, and value of service to each class can be considered among the analytical factors. Plainly, there are reasonable differences that can be cited between the class of residential consumers and the class of business consumers. Accordingly, the proposed tariff must primarily be analyzed in terms of whether it is in the public interest, rather than whether it is unreasonably discriminatory.

Second, the cases cited by the Public Staff in support of its recommendation are relatively old and were decided within a different regulatory context and therefore do not provide dispositive guidance in this situation. On the other hand, that local schedules are bifurcated and therefore long distance schedules should be also is not a convincing argument because there are persuasive public policy considerations, such as universal service, which apply to the former and not the latter. Lastly, the Commission accepts that if the Commission approves bifurcation here, then it will have made a policy decision that other companies will seek to implement.

The primary arguments for bifurcation as being in the public interest are that bifurcation would be beneficial to the different classes of customers and that competitive conditions both necessitate the change and ensure against any undue exploitation of the residential class.

With regard to the benefits, Verizon argued that consumer calling patterns between business and residence are uniquely different. Business calling patters are primarily during the weekdays, while residential customers call at a variety of different time periods. The proposed tariff will allow more flexibility for residential customers, who are not as knowledgeable with respect to mileage-band type tariffs. The new residential tariff will be simpler to explain to the customer and simpler to administer for Verizon, with its three time-of-day rates, the lowest being, as one would expect, on the weekends. The new residential tariff will also encourage residential customers to make a conscious choice when selecting their calling plan, and they will be notified by bill message. To the extent that a residential customer does not believe that the new rate schedule is beneficial to his or her particular calling pattern, the customer is free to seek a better optional plan from Verizon or from a competitor. This is an important point because this MTS proposal cannot be analyzed in isolation from the widespread availability of other plans from Verizon, from other companies, and even from other technologies.

This leads into the other argument for bifurcation--that competitive conditions warrant it. While there is extensive debate as to the degree of competition that exists in, for example, the local market, there is no such argument in relation to long distance. There are scores of providers to choose from. Some consumers do not even presubscribe with an interexchange carrier at all but choose to use calling cards or wireless alternatives. The Commission itself recently recognized that MTS service was competitive when it allowed Verizon to place MTS into the Non-Basic II category for that very reason. In the general long distance market, the Commission has, in effect, taken a "hands-off" policy in terms of regulating long distance rates. Moreover, practically speaking, there is bifurcation already. For example, there are a number of plans that are structured in such a way as to be desirable to business, while they remain technically open to residential consumers; and this has not been deemed to be harmful but rather an appropriate business practice.

While it may be true that Verizon's proposed tariff may lead to higher rates in certain circumstances for customers with particular calling patterns, any "surprise" factor can be eliminated by a more prominent notice requirement. Currently, Verizon proposes to give notice by bill message, but a bill insert with prominent language letting customers know of the possible effects of the new tariff and advising them of their options would be better.

Given the competitive conditions, the residential customer has many choices. Since there are so many carriers to choose from, a Verizon customer--or by extension, any other long distance customer--will not be harmed if rate schedules are bifurcated. This is, in fact, just another logical step toward competition.

IT IS, THEREFORE, ORDERED as follows:

1. That Verizon be allowed to bifurate its MTS Schedule, withdraw the Easy Savings Plan for Residence, and rename and reduce its rates for GTE One Easy Price Plan.

2. That Verizon give notice of bifurcation to its MTS customers by means of bill insert which, among other points, advises the customers of the possible effects of the tariff and of the availability of other calling plans from Verizon or, as a general matter, from other carriers.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of April, 2002.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

dl041602.01

Chairman Jo Anne Sanford, Commissioner Robert V. Owens, Jr., and Commissioner Lorinzo L. Joyner dissent.

Commissioner Sam J. Ervin, IV concurs.

DOCKET NO. P-19, SUB 432

CHAIRMAN JO ANNE SANFORD AND COMMISSIONERS ROBERT V. OWENS, JR., AND LORINZO L. JOYNER, DISSENTING: For reasons of significant public policy, we dissent from the Majority's decision which allows Verizon South, Inc. to bifurcate its MTS rate schedules. In our view, this bifurcation proposal is not in the public interest because Verizon has not demonstrated that allowing such a significant change would be beneficial to residential consumers. The Public Staff has stated it well that the principle should be that, absent valid and compelling public policy reasons to the contrary, telephone customers should have the option of selecting among all service offerings if they meet certain criteria related to the service itself, such as volume and time-of-day usage. Today, all long distance providers have unified MTS rates which are available to both residential and business customers. Thus, the burden of proof is on Verizon in this case to clearly demonstrate that its bifurcation proposal is in the public interest, particularly since that proposal represents such a significant departure from the traditional way of pricing long distance services. We do not believe Verizon has met that burden. Moreover, because this proposal constitutes the first instance of bifurcated MTS rates in North Carolina, Verizon's arguments should not simply be taken at face value; they should be put to the test of careful scrutiny. In our view, careful scrutiny requires rejection of bifurcated MTS rates (or adoption of our alternative suggestion as discussed below) rather than approval. For the following reasons, we dissent.

First, an examination of the residential tariff proposed by Verizon contrasted with the business tariff (i.e., the unified tariff) indicates a certain probability that many residential customers will actually experience significant price increases for certain calling.[1] For example, the proposed Day Period Rate of $.25 per minute for residential customers compares as follows to Verizon's current intraLATA toll rates (which will still be in effect for business customers):

[1] In fact, in its January 7, 2002 cover letter to the proposed tariff filing, Verizon specifically stated that "some" MTS customers may experience an increase in their toll calling charges when the proposed MTS rates go into effect. The Company also acknowledges that, in total, the proposed tariff changes will produce an increase in annual gross revenue of $469,006.

Rate Mileage	Initial 1 Minute	Each Additional Minute
0 -10	$.16	$.10
11 - 16	$.20	$.14
17 - 22	$.23	$.16
23 - 30	$.27	$.19
31 - 40	$.32	$.23
41 - 70	$.32	$.27
71 - 124	$.32	$.27
125 - 292	$.32	$.27

Verizon's proposed Evening Period Rate of $.20 per minute and its proposed Night and Weekend Period Rate of $.15 per minute for residential customers compare to the Company's existing MTS rates as set forth above subject to 25% and 50% discounts, respectively.

Thus, it can be seen that there are many instances where the proposed new residential MTS rates will be significantly higher than what those customers are paying today. In our opinion, the Majority, in reaching its decision, minimized this fact and generally ignored its potentially serious impact on many residential consumers. A better alternative would be for Verizon to voluntarily convert all of its residential customers to the Company's Sensible Minute for Residence Plan unless individual customers opt in writing to stay on the MTS rate schedule. Today, the Sensible Minute plan is an optional intraLATA MTS service which offers one rate per minute pricing of $.10 per minute of use and applies 24 hours per day, seven days per week. There is no monthly rate, service ordering charge, or nonrecurring charge associated with the Sensible Minute Plan. If Verizon's goal is to provide its residential customers with more flexibility and simplicity, the Sensible Minute Plan is a much better alternative than bifurcated MTS rates. That said, we hope Verizon will give serious consideration to this suggestion and file a request for reconsideration and proposed tariffs with the Commission seeking authority to withdraw its bifurcation proposal and instead converting all residential customers to the Sensible Minute Plan, subject to an appropriate opt-out provision.

We are also concerned that, since the Commission has so little control over MTS rates for price plan companies and for interexchange carriers (IXCs), there is no guarantee that carriers will provide MTS at rates comparable to those previously offered. It is not too hard to imagine that some companies may consciously price MTS rates at such a level as to encourage the migration of customers off their networks (or to alternative rate plans[1]) based on the business decision that these customers are not providing it with the requisite level of revenue which its accountants say they should provide. Consumers need an MTS "safe haven," and this is what a unified rate schedule provides. The Majority's decision severely damages this consumer safeguard by destroying the unified MTS rate schedule.

[1] Verizon states in its January 7, 2002 cover letter to the proposed tariff filing that one of its goals is to "encourage residential customers to make a conscious choice when selecting their calling plan."

Simply put, in today's competitive environment, MTS service constitutes the default rate schedule for many residential customers (including those consumers who are the least inclined, for whatever reason, to choose an alternative pricing plan). That being the case, Verizon (and any other carrier for that matter) should be required to demonstrate a strong and very clear public interest rationale for subjecting residential consumers to different MTS rates from those afforded to businesses. Verizon has not carried this burden. Furthermore, we assume that the Majority's decision to allow Verizon's bifurcation proposal will encourage many if not all of the other long distance providers in North Carolina to follow Verizon's lead and propose bifurcation of their MTS rate schedules. The horse is now out of the barn and a bad precedent has been set by the Majority. The harmful precedent which has been put in motion cannot be undone (unless Verizon reconsiders and is willing to adopt our suggestion and request regarding its Sensible Minute Plan). In our opinion, there is more benefit to be gained from protecting residential customers from bifurcated MTS rate schedules than any possible harm that might result to Verizon if the Company's bifurcation proposal had been denied.

For all of the reasons set forth above, we strongly believe that Verizon's bifurcation proposal should be denied and that, instead; Verizon should voluntarily convert all of its residential customers to the Company's Sensible Minute for Residence Plan unless individual customers opt in writing to stay on the MTS rate schedule.

\s\ Jo Anne Sanford
Chairman Jo Anne Sanford

\s\ Robert V. Owens, Jr.
Commissioner Robert V. Owens, Jr.

\s\ Lorinzo L. Joyner
Commissioner Lorinzo L. Joyner

DOCKET NO. P-19, SUB 432

Although I fully concur in the Commission's order, I write separately to more fully explain the basis for my conclusion that approval of Verizon's bifurcation proposal is consistent with considerations of sound regulatory policy. At bottom, I believe that, once the Commission concludes that a particular market is workably competitive, the public interest generally precludes us from using traditional regulatory analysis in determining whether to approve or disapprove proposed tariffs. Given the Commission's prior unanimous decision to reclassify Verizon's MTS service from the Non-Basic 1 Category to the Non-Basic 2 Category, I believe that the time has come for regulators to step back and allow the competitive market to operate in the customary fashion.

The regulatory treatment of Verizon's MTS service is governed by the provisions of the Company's Commission-approved price regulation plan. Verizon has proposed in this proceeding to establish separate MTS tariffs for business and residential customers. The effect of Verizon's proposal is to leave business customers subject to the existing MTS rates, which are both time and distance-sensitive, and to establish a separate MTS schedule for residential customers, which relies exclusively upon time-of-day sensitive rates. A "restructure" for purposes of Verizon's price regulation plan includes "[a] modification of the rate structure of an existing service by introducing one or more new rate elements, establishing vintage rates for the service, deleting one or more rate elements or redefining the functions, features or capabilities provided by a rate element so that the service covered by the rate element differs from that furnished prior to the modification." As a result of the fact that Verizon has proposed to introduce and delete certain rate elements from the existing MTS tariff available to residential customers, the present proceeding clearly involves a "restructure" as that term is defined in Verizon's price regulation plan.

According to Section 5.A(1) of Verizon's price regulation plan, "[i]n the case of a tariff filing to restructure rates," the Commission "may disapprove or modify the tariff filing if it finds that the restructure of the tariff and the resulting effects on new and existing customers are not in the public interest." As a result, it is clear that the Commission must employ a "public interest" test in evaluating the appropriateness of Verizon's proposal. On the other hand, the Commission should apply this standard in light of all surrounding facts and circumstances, the most salient of which in this instance is that Verizon's MTS service is currently included in the Non-Basic 2 Category. Section 6.C(2) of Verizon's price regulation plan states in no uncertain terms that "[p]rices for individual rate elements within the Non-Basic 2 Services Category may be increased or decreased by varying amounts, and the rate changes are not subject to either a rate element constraint or Category constraint" and that "[p]rice increases or decreases may be made at any time and are not limited to any specific number of increases or decreases in the twelve-month period between anniversary dates of the Plan." Thus, the clear import of Verizon's price regulation plan is that the protections available to customers purchasing services contained in the Non-Basic 2 Category should be primarily those afforded by the competitive market.

Less than a year ago, the Commission directly confronted the issue of whether Verizon's MTS service was provided in a workably competitive market. At that time, the Commission considered whether to approve the Company's request that MTS be reclassified from the Non-

Basic 1 Category to the Non-Basic 2 Category. In support of that request, Verizon argued that, "[a]t the end of 2000, [its] IntraLATA toll market share had decreased to about 32% (36% business and 33% residential)" and that it "ha[d] lost about two thirds of the intraLATA toll market it originally had in North Carolina." After indicating that its wireline competitors "include such large, well-known, and well-financed entities [as] AT&T, MCI, and Sprint as well as smaller niche players such as BTI, ICI, Adelphia, MadisonRiver Communications, NewSouth Communications, CTC and ITC DeltaCom" and that it faced "considerable competition from alternative technologies" such as wireless service in the intraLATA toll market as well, Verizon argued that "[t]he IntraLATA toll market in North Carolina is demonstrably competitive" and that "[r]estrictions on Verizon's IntraLATA services are outdated, unnecessary, and inconsistent with the public interest." [Verizon Comments, pp. 10-11]. Similarly, in that same proceeding, the Public Staff expressed its "confiden[ce] that customers throughout the Verizon service territory, even in the most rural and less populated exchanges, may choose from multiple carriers for the provision of IntraLATA toll service" and "that the market for 1+ IntraLATA traffic in Verizon's service area in North Carolina can perform" the function of "driv[ing] prices toward cost so that competitors cannot raise rates at will." [Public Staff Comments, p. 3]. Although the Public Staff did refer to Verizon's continued obligation to file tariffs, its continued ability to protect the public interest through the intervention process, and the Commission's authority to require the reclassification of Verizon's MTS service from the Non-Basic 2 Category to the Non-Basic 1 Category in its comments supporting the proposed reclassification, the Public Staff has not argued in this proceeding that the intraLATA toll market is not workably competitive or sought the reclassification of Verizon's MTS service from the Non-Basic 2 Category to the Non-Basic 1 Category. After considering these and other comments, none of which expressed any opposition to Verizon's proposal, the Commission approved Verizon's reclassification request on the basis that "there was widespread agreement that [MTS service] is sufficiently competitive to justify its reclassification to Non-Basic 2." [Order Ruling On Reclassification Requests, p. 6].

The transition from traditional regulation to a more competitive environment is a difficult process for regulators. I understand and fully appreciate those difficulties. At bottom, however, the American economy assumes that traditional regulation is not only unnecessary, but potentially injurious, when applied to markets which are workably competitive. For this reason, I believe that, in workably competitive markets, it is in the public interest for regulators to allow the market to function instead of engaging in traditional regulation. In ordinary, unregulated markets, the principal protection from high prices or poor service available to the consumer is the ability to take his or her business elsewhere. The regulatory process is designed for situations in which a workably competitive market simply does not, for whatever reason, exist. In other words, the regulatory process should be relied upon for the purpose of protecting consumers when the market does not provide sufficient protection for affected consumers. The arguments advanced by the Public Staff in this proceeding do not tend to show that the intraLATA toll market is not workably, as compared to perfectly, competitive. Instead, the Public Staff's arguments rest on considerations of the type characteristic of traditional regulation. Having decided that Verizon's MTS service is provided in a workably competitive market, I do not believe that it is in the public interest for the Commission to establish Verizon's business strategy by regulatory fiat in the absence of evidence of significant, unanticipated market failure. In the event that a particular customer objects to the impact of Verizon's proposal, our prior decisions indicate that this customer has numerous other options for obtaining intraLATA toll service.

Given the availability of numerous other intraLATA toll providers, a Verizon customer who objects to the proposed bifurcation of MTS service can express his or her dissatisfaction in the most effective way possible--by taking his or her business elsewhere. A decision to the contrary based on the potential rate impact of a particular tariff filing upon one or more customer classes would be directly contrary to the Commission's decision to classify MTS service as Non-Basic 2. As a result, given that the record discloses no basis for believing that Verizon customers lack an array of readily-available competitive alternatives to the Company's MTS service or provides any other basis for believing that the market which the Commission has already found to be workably competitive has somehow failed, I believe that the public interest is best served by allowing the competitive market to operate in the ordinary manner and therefore join the Commission's decision to approve Verizon's proposed bifurcation of its MTS service.

\s\ Sam J. Ervin, IV
Commissioner Sam J. Ervin, IV

ORDERS AND DECISIONS – PRINTED

INDEX OF ORDERS PRINTED

GENERAL ORDERS

GENERAL ORDERS – Electricity **Page**

E-100, SUB 85A - Order Denying Reconsideration (08/20/2002) 1

GENERAL ORDERS - Natural Gas

G-100, SUB 84 - Order on Hedging (02/26/2002) 4

GENERAL ORDERS - Telecommunications

P-100, SUB 58A- Order Ruling on Confidentiality of Monthly Access Line Reports (06/19/2002 17

P-100, SUB 72A – Order on Flow-Through Compliance (11/01/2002) 23

P-100, SUB 99 - Order Amending Commission Rule R9-8 and Scheduling an Evidentiary Hearing on Specific Issues (12/27/2002) 30

P-100, SUB 133D - Order Adopting Final Permanent Deaveraged UNE Rates (04/05/2002 143

P-100, SUB 133J - Order Addressing Unresolved Collocation Rate Issues (09/24/2002) 146

P-100, SUB 133K - Order Concerning Performance Measurements and Enforcement Mechanisms (05/22/2002) 177

ELECTRICITY

ELECTRICITY - Complaint

E-2, SUB 808 – Carolina Power & Light Company -- Recommended Order (10/25/2002) 385

E-2, SUB 811 – Carolina Power & Light Company – Recommended Order Granting Complaint (09/18/2002) 390

ORDERS AND DECISIONS – PRINTED

E-7, SUB 675 -- Duke Power, a Division of Duke Energy Corporation – Order Dismissing Complaint Due to Lack of Jurisdiction and Closing Docket (03/12/2002) 393

ELECTRICITY - Miscellaneous

E-7, SUB 722 – Duke Power, a Division of Duke Energy Corporation – Order Ruling on Motions and Approving Settlement Agreement (12/11/2002) 397

NATURAL GAS

NATURAL GAS - Merger

G-9, SUB 466; G-3, SUB 251 – Piedmont Natural Gas Company; NUI North Carolina Gas -- Order Approving Petition (10/08/2002) 415

NATURAL GAS - Miscellaneous

G-46, SUB 0 -- Delphi Development, LLC - Order Denying Request for Master Metering (03/12/2002) 441

NATURAL GAS - Rates

G-21, SUB 431 – North Carolina Natural Gas Corporation – Order Granting Petition to Increase Margin and Rebalance Rates (09/23/2002) 432

TELECOMMUNICATIONS

TELECOMMUNICATIONS - Certificates

P-120, SUB 15; P-120, SUB 16 -- Pineville Telephone Company - Order Allowing for CLP and IXC Certification (12/18/2002) 443

TELECOMMUNICATIONS - Show Cause

P-140, SUB 79 - Recommended Order Finding Violations and Imposing Penalty (10/24/2002) 452

TELECOMMUNICATIONS - Tariffs

P-19, SUB 432 – Verizon South, Inc. - Order Allowing Bifurcation (04/26/2002) 475

INDEX OF
ORDERS AND DECISIONS LISTED

GENERAL ORDERS

GENERAL ORDERS - GENERAL

M-100, SUB 89 – Order Adopting Revised Safety Rules (04/02/2002)

M-100, SUB 130 – Order Adopting Form for Verification of Reports (11/06/2002)

GENERAL ORDERS - Electric

E-100, SUB 56 – Order Concerning Hearing and Discovery and Requiring Reports (09/11/2002)

E-100, SUB 89 – Order Granting Motion and Amending Form (03/08/2002)

E-100, SUB 91 – Order Closing Docket (04/18/2002)

E-100, SUB 93 – Order Approving Integrated Resource Plans (03/28/2002)

E-100, SUB 94 - Order Holding Docket in Abeyance (06/11/2002)

E-100, SUB 95 - Order Granting Request to Withdraw Application and Closing Docket (01/29/2002)

GENERAL ORDERS –Natural Gas

G-100, SUB 44 - Order Approving Amendments to Form G-1 (10/10/2002)

G-100, SUB 47 - Order Closing Docket (08/22/2002)

GENERAL ORDERS - Telephone

P-100, SUB 84B - Order on Reconsideration (10/23/2002)

P-100, SUB 99 – Order Amending Rule (09/11/2002); Order on Reconsideration Adopting Further Amendments to Rule R9-8(c) (11/06/2002)

P-100, SUB 133B - Order Closing Docket (08/30/2002)

ORDERS AND DECISIONS LISTED

P-100, SUB 133D - Order Adopting Final Permanent Phase I and Phase II UNE Rates for BellSouth and Verizon (05/01/2002); Order Adopting Final Permanent Phase I and Phase II UNE Rates for Carolina and Central (07/29/2002); Order Granting, in Part, Public Staff's Motion to Require BellSouth to Re-File Cost Study and Rates (07/31/2002)

P-100, SUB 133H - Order Closing Docket (12/16/2002)

P-100, SUB 133I - Order Closing Docket (12/16/2002)

P-100, SUB 133J – Order Addressing Motions for Reconsideration and Clarification (08/20/2002); Order Addressing Disputed Language in the Standard Offering (09/03/2002)

P-100, SUB 133K – Order Addressing Motions for Reconsideration and/or Clarification and the Joint Report on Correlated and Customer-Impacting Measures (11/01/2002)

P-100, SUB 137A - Order Closing Docket (08/30/2002)

P-100, SUB 148 - Order Closing Docket (08/29/2002)

GENERAL ORDERS – Small Power Producer

SP-100, SUB 19 – Order Ruling on Public Utility Status (06/21/2002)

GENERAL ORDERS - Transportation

T-100, SUB 49 - Order Ruling on Household Goods Transportation (02/22/2002); Order Ruling on Comments and Reply Comments to Maximum Rate Tariff (09/24/2002); Order Ruling on Motions and Issuing Final Version of Maximum Rate Tariff (12/20/2002)

GENERAL ORDERS - Water/Sewer Company

W-100, SUB 38 - Recommended Order Finding Violation and Appropriate Penalty (Viking Utilities Corporation) (10/21/2002); Recommended Order Finding Violation and Appropriate Penalty (Yadkin Water Corporation) (10/21/2002); Recommended Order Finding Violation and Appropriate Penalty (Bay Tree Utility Company (10/21/2002); Recommended Order Finding Violation and Appropriate Penalty (Don S. Page) (10/21/2002); Recommended Order Finding Violation and Appropriate Penalty (TPG Utilities, Inc.) (10/21/2002)

W-100, SUB 39 - Order Requiring Reporting of Monthly Water Usage (09/13/2002)

ORDERS AND DECISIONS LISTED

GENERAL ORDERS - Resale of Water/Sewer

WR-100, SUB 1 - Order of Clarification (04/04/2002)

WR-100, SUB 1; W-100, SUB 37; WR-3, SUB 44 – Order Initiating Rulemaking Proceeding and Closing Docket (04/04/2002)

BUS/BROKER

BUS/BROKER - Broker Certificate

Cabin Fever Tours; Regina G. Deaver and Edwin B. Deaver, d/b/a - Order Granting Broker's License
B-694, SUB 0 (01/25/2002)

BUS/BROKER - Cancellation of Certificate

B J & M Tours; Isabelle A. Johnson, d/b/a - Order Canceling Broker's License
B-480, SUB 1 (09/13/2002)

On The Go Tours, Inc. - Order Canceling Broker's License
B-681, SUB 1 (03/15/2002)

Spirit of Columbus Explorations & Expeditions, Inc. - Order Canceling Broker's License
B-582, SUB 2 (11/25/2002)

ELECTRIC

ELECTRIC - Accounting

Carolina Power & Light Company – Order Granting Motion to Modify Accelerated Cost Recovery Schedule
E-2, SUB 737 (06/14/2002)

ELECTRIC - Adjustments of Rates/Charges

Carolina Power & Light Company – Order Approving Fuel Charge Adjustment
E-2, SUB 806 (09/10/2002)

Dominion North Carolina Power; Virginia Electric & Power Co., d/b/a - Order Approving Fuel Charge Adjustment
E-22, SUB 402 (12/20/2002); Errata Order (12/27/2002)

Duke Power, a Division of Duke Energy Corporation - Order Approving Fuel Charge Adjustment
E-7, SUB 708 (06/25/2002)

Duke Power, a Division of Duke Energy Corporation - Order Approving Purchased Power Cost Rider
E-7, SUB 717 (08/28/2002)

Western Carolina University - Order Approving Purchased Power Cost Rider Schedule "CP"
E-35, SUB 30 (04/17/2002)

ELECTRIC - Certificate

Carolina Power & Light Company - Order Approving Revisions
E-2, SUB 720 (07/02/2002)

ELECTRIC - Contracts/Agreements

Carolina Power & Light Company - Order Accepting Agreements for Filing and Allowing Utilities to Pay Compensation
E-2, SUB 767 (05/30/2002)

Carolina Power & Light Company - Order Accepting Agreement for Filing and Allowing Payment to Affiliate
E-2, SUB 767; G-21, SUB 399; P-708, SUB 7 (12/18/2002)

Carolina Power & Light Company - Order on 20-Day Notice
E-2, SUB 805 (07/10/2002)

Carolina Power & Light Company - Order on 20-Day Notice
E-2, SUB 817 (08/08/2002)

Carolina Power & Light Company - Order on 20-Day Notice
E-2, SUB 818 (08/30/2002)

Carolina Power & Light Company - Notice of Decision
E-2, SUB 820 (12/23/2002)

Carolina Power & Light Company - Order Accepting Service Agreement for Filing and Permitting Operation Thereunder Pursuant to G.S. 62-153
E-2, SUB 821 (12/18/2002)

Dominion North Carolina Power; Virginia Electric & Power Co., d/b/a - Order Granting Motion to Withdraw Petition and Closing Docket
E-22, SUB 396 (06/24/2002)

Dominion North Carolina Power; Virginia Electric & Power Co., d/b/a - Order Accepting Agreements for Filing
E-22, SUB 398 (08/01/2002)

Duke Power, a Division of Duke Energy Corporation - Order Approving Affiliate Agreements with Conditions
E-7, SUB 694 (09/26/2002); Errata Order (10/03/2002)

Duke Power, a Division of Duke Energy Corporation - Order Closing Docket
E-7, SUB 698 (06/26/2002)

ELECTRIC - Complaint

Carolina Power & Light Company - Recommended Order Denying Complaint and Granting Counterclaim
E-2, SUB 788 (02/11/2002)

Carolina Power & Light Company - Order Dismissing Complaints (Gerald Satterwhite)
E-2, SUB 790 (05/08/2002)

Carolina Power & Light Company - Order Closing Docket in the Complaint of Ray Taylor
E-2, SUB 792 (04/05/2002)

Carolina Power & Light Company - Order Canceling Hearing, Dismissing Complaint and Closing Docket (Betty L. and Clay A. Watson)
E-2, SUB 794 (04/26/2002)

Carolina Power & Light Company - Order Dismissing Complaint and Closing Docket (Barbara Dauterman)
E-2, SUB 795 (03/22/2002)

Carolina Power & Light Company - Order Dismissing Complaint and Closing Docket (Robert Krosky)
E-2, SUB 797 (02/14/2002)

Duke Power, a Division of Duke Energy Corporation - Order Dismissing Complaint and Closing Docket (Odis B. and Hazel B. Welch)
E-7, SUB 674 (02/11/2002)

Duke Power, a Division of Duke Energy Corporation – Recommended Order Denying Complaints (Edward L. Shepherd)
E-7, SUB 688 (04/05/2002)

Duke Power, a Division of Duke Energy Corporation - Order Dismissing Complaint and Closing Docket (Annie G. Goode, c/o Katrenia Goode Hardin)
E-7, SUB 699 (02/11/2002)

Duke Power, a Division of Duke Energy Corporation - Order Ruling on Outstanding Motions, Dismissing Complaints with Prejudice, and Dissolving Stays (Pam Hanks and Universal Life Church Outreach Ministries)
E-7, SUB 702; E-7, SUB 703 (04/10/2002)

Duke Power, a Division of Duke Energy Corporation - Order Closing Docket in Complaint of Matthew Posnanski and Mary Lambert
E-7, SUB 705 (01/02/2002)

Duke Power, a Division of Duke Energy Corporation – Recommended Order Denying Complaint (Mrs. Blandine Tate)
E-7, SUB 706 (07/30/2002)

Duke Power, a Division of Duke Energy Corporation - Order Closing Docket in Complaint of Benjamin Shane Hilton
E-7, SUB 712 (07/15/2002)

Duke Power, a Division of Duke Energy Corporation - Order Closing Docket in Complaint of Mark Bartenfield
E-7, SUB 716 (08/28/2002)

ELECTRIC - Electric Generation Certificate

Carolina Power & Light Company – Recommended Order Granting Certificate
E-2, SUB 793 (05/03/2002); Order Making Recommended Order Final (05/08/2002)

Duke Power, a Division of Duke Energy Corporation - Order Allowing Withdraw of Application and Closing Docket
E-7, SUB 680 (10/03/2002)

Public Works Commission, City of Fayetteville/SC Electric & Gas Company - Order Closing Docket
E-59, SUB 0 (02/21/2002)

ELECTRIC - Electric Transmission Line Certificate

Carolina Power & Light Company – Recommended Order Issuing Certificate of Environmental Compatibility and Public Convenience and Necessity
E-2, SUB 796 (07/08/2002); Final Order Overruling Exceptions and Affirming Recommended Order (08/29/2002)

Carolina Power & Light Company - Order Granting Certificate of Environmental Compatibility and Public Convenience and Necessity and Waiving Hearing Requirements
E-2, SUB 801 (07/11/2002)

Carolina Power & Light Company - Order Issuing Certificate of Environmental Compatibility and Public Convenience and Necessity
E-2, SUB 803 (09/26/2002)

ELECTRIC - Filings Due Per Order

Carolina Power & Light Company - Order Adopting Further Procedures for Regulatory Condition Filings
E-2, SUB 740A; E-2, SUB 453A; E-2, SUB 760A (09/11/2002)

Carolina Power & Light Company - Order Granting Authority to Enter Credit Agreement and to Issue Securities
E-2, SUB 809 (07/03/2002)

Carolina Power & Light Company - Order Granting Authority to Enter Credit Agreement and to Issue Securities
E-2, SUB 810 (07/03/2002)

Carolina Power & Light Company - Order Granting Authority to Issues Securities
E-2, SUB 816 (07/23/2002)

Duke Power, a Division of Duke Energy Corporation - Order Closing Dockets
E-7, SUB 608; E-7, SUB 613; E-7, SUB 631 (12/04/2002)

Duke Power, a Division of Duke Energy Corporation - Order Closing Docket
E-7, SUB 691 (11/22/2002)

Duke Power, a Division of Duke Energy Corporation - Order Granting Authority to Issue and Sell Securities
E-7, SUB 707 (02/08/2002); Order Closing Docket (11/22/2002)

Duke Power, a Division of Duke Energy Corporation - Order Approving Fixed Payment Program for Residential Customers
E-7, SUB 710 (07/17/2002)

ORDERS AND DECISIONS LISTED

ELECTRIC - Merger

Carolina Power & Light Company - Order Adopting Procedures for Regulatory Condition Filings
E-2, SUB 740; G-21, SUB 377; E-2, SUB 753; P-708, SUB 5; G-21, SUB 387; E-2, SUB 760 (01/29/2002)

Dominion North Carolina Power; Virginia Electric & Power Co., d/b/a - Order Closing Docket and Opening New Docket
E-22, SUB 380; E-22, SUB 380A (03/06/2002)

Duke Power, a Division of Duke Energy Corporation - Order Closing Docket and Opening New Docket
E-7, SUB 596; E-7, SUB 596A (03/06/2002)

ELECTRIC - Miscellaneous

Carolina Power & Light Company - Order Closing Docket
E-2, SUB 400 (08/21/2002)

Carolina Power & Light Company - Order on 20-Day Notice
E-2, SUB 798 (02/26/2002)

Dominion North Carolina Power; Virginia Electric & Power Co., d/b/a - Order Closing Docket
E-22, SUB 392 (02/20/2002)

Dominion North Carolina Power; Virginia Electric & Power Co., d/b/a - Order Granting Request to Withdraw Application, Canceling Hearing, and Closing Docket
E-22, SUB 395 (01/07/2002)

Dominion North Carolina Power; Virginia Electric & Power Co., d/b/a - Order Closing Docket
E-22, SUB 400 (07/16/2002)

Duke Power, a Division of Duke Energy Corporation - Order Approving Reassignment of Service Area
E-7, SUB 677 (10/31/2002)

ELECTRIC - Rate Schedules/Riders/Service Rules and Regulations

Carolina Power & Light Company - Order Approving Extension
E-2, SUB 704 (06/21/2002)

Carolina Power & Light Company - Order Closing Docket
E-2, SUB 773 (06/05/2002)

ORDERS AND DECISIONS LISTED

Carolina Power & Light Company - Order Approving Rider
E-2, SUB 819 (11/26/2002)

Dominion North Carolina Power; Virginia Electric & Power Co., d/b/a - Order Allowing Amended Rate Schedule to Become Effective
E-22, SUB 401 (07/11/2002)

Duke Power, a Division of Duke Energy Corporation - Order Approving Rider
E-7, SUB 719 (08/01/2002)

ELECTRIC - Securities

Carolina Power & Light Company - Order Closing Docket
E-2, SUB 642 (07/24/2002)

Carolina Power & Light Company - Order Closing Dockets
E-2, SUB 687; E-2, SUB 694; E-2, SUB 695; E-2, SUB 738 (06/14/2002)

Carolina Power & Light Company -- Order Granting Authority to Enter Into a Pollution Control Bond Refinancing
E-2, SUB 791 (01/09/2002)

Carolina Power & Light Company – Order Adopting Reporting Requirements
E-2, SUB 799 (02/27/2002)

Carolina Power & Light Company - Order Concerning Reporting Requirements
E-2, SUB 812 (11/19/2002)

Duke Power, a Division of Duke Energy Corporation - Order Approving Merger and Issuance of Securities
E-7, SUB 700 (02/08/2002)

Duke Power, a Division of Duke Energy Corporation - Order Granting Authority to Issue and Sell Securities
E-7, SUB 720 (11/13/2002)

ELECTRIC - Sale/Transfer

Carolina Power & Light Company - Order on Motions of Public Staff and CUCA
E-2, SUB 753; P-708, SUB 5; G-21, SUB 387 (01/29/2002) (Commissioner Lorinzo L. Joyner Dissenting in Part) (Chairman Jo Anne Sanford, Dissenting in Part) (Commissioner Sam J. Ervin, IV did not participate in this decision)

Carolina Power & Light Company - Order Ruling on Joint Motion of CP&L and the Public Staff Regarding Market Valuation of Assets
E-2, SUB 778; EMP-5, SUB 1 (02/01/2002) (Commissioner J. Richard Conder Dissents) (Commissioners Robert V. Owens, Jr. and Sam J. Ervin, IV, did not participate)

Dominion North Carolina Power; Virginia Electric & Power Co., d/b/a - Order Granting Request to Withdraw Application, Canceling Hearing, and Closing Docket
E-22, SUB 391 (01/17/2002)

Duke Power, a Division of Duke Energy Corporation - Order Allowing Withdrawal of Application and Closing Docket
E-7, SUB 690; E-2, SUB 781 (02/25/2002)

ELECTRIC MERCHANT PLANT

Electric Merchant Plant – Certificate

Carolina Generation, LLC – Order Granting Certificate
EMP-11, SUB 0 (06/28/2002)

Dominion Person, Inc. – Order Granting Certificate
EMP-12, SUB 0 (08/13/2002)

Enron North American Corporation – Order Closing Docket
EMP-2, SUB 0 (09/18/2002)

Fayetteville Generation, LLC – Order Granting Certificate
EMP-10, SUB 0 (04/19/2002)

GenPower Earleys, LLC – Order Allowing Motion, Amending Certificate, and Requiring Report
EMP-4, SUB 0 (05/20/2002)

Mirant Gastonia, LLC – Order Granting Certificate
EMP-9, SUB 0 (02/20/2002)

Still Pines Energy, LLC – Order Granting Certificate
EMP-8, SUB 0 (06/28/2002)

Electric Merchant Plant – Electric Transmission Line

Mirant Gastonia, LLC - Order Waiving Notice and Hearing and Issuing Certificate
EMP-9, SUB 1 (03/28/2002)

ORDERS AND DECISIONS LISTED

NATURAL GAS

NATURAL GAS - Adjustments of Rates/Charges

Cardinal Extension Company, LLC - Order Approving Revised Rate Schedule
G-39, SUB 3 (10/30/2002)

Eastern North Carolina Natural Gas Company - Order Allowing Rate Changes Effective November 1, 2002
G-44, SUB 5 (10/30/2002)

Frontier Energy, LLC - Order on Annual Review of Gas Costs
G-40, SUB 28 (05/22/2002)

Frontier Energy, LLC - Order Allowing Rate Changes Effective March 1, 2002
G-40, SUB 29 (02/26/2002)

Frontier Energy, LLC - Order Allowing Rate Changes Effective April 1, 2002
G-40, SUB 30 (03/28/2002)

Frontier Energy, LLC - Order Allowing Rate Changes Effective May 1, 2002
G-40, SUB 31 (05/01/2002)

Frontier Energy, LLC - Order Allowing Rate Changes Effective June 1, 2002
G-40, SUB 32 (05/30/2002)

Frontier Energy, LLC - Order Allowing Rate Changes Effective July 1, 2002
G-40, SUB 35 (06/27/2002)

Frontier Energy, LLC - Order Allowing Rate Changes Effective October 1, 2002
G-40, SUB 37 (09/26/2002)

Frontier Energy, LLC - Order Allowing Rate Changes Effective November 1, 2002
G-40, SUB 38 (10/30/2002)

North Carolina Natural Gas Corporation - Order on Annual Review of Gas Costs
G-21, SUB 425 (07/02/2002); Order Closing Docket (12/10/2002)

North Carolina Natural Gas Corporation - Order Allowing Rate Changes Effective April 1, 2002
G-21, SUB 426 (03/28/2002)

North Carolina Natural Gas Corporation - Order Allowing Rate Changes Effective June 1, 2002
G-21, SUB 430 (05/30/2002)

North Carolina Natural Gas Corporation - Order Allowing Rate Changes Effective November 1, 2002
G-21, SUB 436 (10/30/2002)

ORDERS AND DECISIONS LISTED

North Carolina Natural Gas Corporation - Order Allowing Changes Effective January 1, 2003
G-21, SUB 438 (12/18/2002)

NUI North Carolina Gas - Order Transferring Filing of Contract to Sub 253 Docket and Closing Sub 241 Docket
G-3, SUB 241; G-3, SUB 253 (08/23/2002)

NUI North Carolina Gas - Order Allowing Rate Changes Effective February 1, 2002
G-3, SUB 246 (01/31/2002)

NUI North Carolina Gas - Order Allowing Rate Changes Effective March 1, 2002
G-3, SUB 247 (02/26/2002)

NUI North Carolina Gas - Order Allowing Rate Changes Effective April 1, 2002
G-3, SUB 248 (03/28/2002)

NUI North Carolina Gas - Order Allowing Rate Changes Effective June 1, 2002
G-3, SUB 250 (05/30/2002)

NUI North Carolina Gas - Order Approving Rate Changes Effective July 1, 2002
G-3, SUB 252 (07/02/2002)

NUI North Carolina Gas - Order on Annual Review of Gas Costs
G-3, SUB 253 (10/21/2002)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Changes Effective February 1, 2002
G-9, SUB 460 (01/31/2002)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increases Effective May 1, 2002
G-9, SUB 463 (05/01/2002)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Changes Effective June 1, 2002
G-9, SUB 464 (05/30/2002)

Piedmont Natural Gas Company, Inc. - Order on Annual Review of Gas Costs
G-9, SUB 467 (10/28/2002)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Changes and Consolidation of Sales Only Customers Deferred Accounts
G-9, SUB 469 (10/30/2002)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Changes Effective February 1, 2002
G-5, SUB 427 (01/31/2002)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Changes Effective July 1, 2002
G-5, SUB 432 (06/27/2002)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Changes Effective November 1, 2002
G-5, SUB 435 (10/30/2002)

Toccoa Natural Gas - Order on Annual Review of Gas Costs
G-41, SUB 8 (12/13/2002)

NATURAL GAS - Contracts/Agreements

Frontier Energy, LLC - Order Approving Contract
G-40, SUB 33 (08/21/2002)

Frontier Energy, LLC - Order Approving Contract
G-40, SUB 34 (08/21/2002)

North Carolina Natural Gas Corporation - Order Accepting Agreements for Filing and Allowing Utilities to Pay Compensation
G-21, SUB 399; E-2, SUB 767; P-708, SUB 7 (06/21/2002)

North Carolina Natural Gas Corporation - Order Allowing Contract to Become Effective
G-21, SUB 417 (08/21/2002)

North Carolina Natural Gas Corporation - Order Approving Contract
G-21, SUB 433 (08/21/2002)

North Carolina Natural Gas Corporation - Order Approving Contract
G-21, SUB 434 (08/14/2002)

North Carolina Natural Gas Corporation - Order Accepting Agreement for Filing and Allowing Utility to Pay Compensation
G-21, SUB 437 (11/20/2002)

Piedmont Natural Gas Company, Inc. - Order Approving Contract
G-9, SUB 450 (05/01/2002)

Piedmont Natural Gas Company, Inc. - Order Approving Gas Services Agreement Effective February 1, 2002
G-9, SUB 458 (01/31/2002)

ORDERS AND DECISIONS LISTED

NATURAL GAS - Complaint

North Carolina Natural Gas Corporation - Order Dismissing Complaint (Dennis and Sandra Arner)
G-21, SUB 423 (03/28/2002)

Piedmont Natural Gas Company, Inc. - Order Closing Docket in Complaint of Mrs. William (Suzanne) Wrenn
G-9, SUB 438 (01/07/2002)

Public Service Company of North Carolina, Inc. - Order Dismissing Complaint and Closing Docket (Tracy Woody)
G-5, SUB 428 (06/04/2002)

Public Service Company of North Carolina, Inc. - Order Dismissing Complaint and Closing Docket (Michael S. Wright)
G-5, SUB 430 (06/14/2002)

Public Service Company of North Carolina, Inc. - Recommended Order Denying Complaint (Jennifer Robinson)
G-5, SUB 433 (09/27/2002)

Public Service Company of North Carolina, Inc. - Order Closing Docket in Complaint of Earl R. Lucas, Jr., et al.
G-5, SUB 434 (08/23/2002)

NATURAL GAS – Expansion

North Carolina Natural Gas Corporation - Order Closing Docket
G-21, SUB 306A (04/25/2002)

NATURAL GAS - Filings Due per Order or Rule

Frontier Energy, LLC - Order Accepting Affiliated Contract for Filing and Permitting Operation Thereunder Pursuant to G.S. 62-153
G-40, SUB 1 (05/30/2002)

Frontier Energy, LLC - Order Closing Docket
G-40, SUB 4 (11/14/2002)

NUI North Carolina Gas - Order Closing Docket
G-3, SUB 157 (10/22/2002)

ORDERS AND DECISIONS LISTED

NATURAL GAS - Merger

NUI North Carolina Gas - Order Closing Docket and Opening New Docket
G-3, SUB 232; G-3, SUB 232A (03/06/2002)

Public Service Company of North Carolina, Inc - Order Closing Dockets and Opening New Docket
G-5, SUB 400; G-5, SUB 400A; G-43, SUB 0 (03/06/2002)

NATURAL GAS - Miscellaneous

North Carolina Natural Gas Corporation - Order Approving Program
G-21, SUB 428; G-44, SUB 3 (09/24/2002)

North Carolina Natural Gas Corporation - Order Granting Application for Waiver
G-21, SUB 435 (09/13/2002)

Piedmont Natural Gas Company, Inc. - Order Closing Docket
G-9, SUB 422 (07/05/2002)

Piedmont Natural Gas Company, Inc. - Order on Hedging Program
G-9, SUB 454 (10/18/2002)

Piedmont Natural Gas Company, Inc. - Order Granting Petition Regarding Supplier Refunds
G-9, SUB 459 (02/21/2002)

NATURAL GAS - Rate Increase

North Carolina Natural Gas Corporation - Order Allowing Withdrawal of Application and Closing Docket
G-21, SUB 424 (05/14/2002)

Piedmont Natural Gas Company, Inc. - Order Approving Rate Increase
G-9, SUB 461 (10/28/2002)

NATURAL GAS - Rate Schedules/Riders/Service Rules and Regulations

North Carolina Natural Gas Corporation - Order Approving Rate Schedule RE-2-Contract Aggregation
G-21, SUB 432 (06/27/2002)

ORDERS AND DECISIONS LISTED

NATURAL GAS - Securities

Eastern North Carolina Natural Gas Company - Order Granting Authority to Issue Securities
G-44, SUB 4 (09/26/2002)

Frontier Energy, LLC - Order Approving the Revised Financing Plan
G-40, SUB 27 (01/22/2002); Order Approving Amendments to the Revised Financing Plan, Accepting Amended Affiliated Contracts for Filing, and Permitting Operation Thereunder Pursuant to G.S. 62-153 (06/28/2002)

North Carolina Natural Gas Corporation - Order Closing Dockets
G-21, SUB 245; G-21, SUB 356; G-21, SUB 364 (04/25/2002)

North Carolina Natural Gas Corporation - Order Closing Docket
G-21, SUB 403 (05/01/2002)

Piedmont Natural Gas Company, Inc. - Order Closing Dockets
G-9, SUB 364; G-9, SUB 379 (04/18/2002)

Piedmont Natural Gas Company, Inc. - Order Closing Docket
G-9, SUB 390 (04/26/2002)

TELECOMMUNICATIONS

TELECOMMUNICATIONS - Cancellation of Certificate

ACS Systems, Inc. - Order Canceling Certificate
P-710, SUB 1 (01/11/2002)

Adelphia Business Solutions Operations, Inc. - Order Closing Docket
P-1020, SUB 2 (08/23/2002)

Advanced TelComGroup, Inc. - Order Canceling Certificates
P-962, SUB 2 (09/11/2002)

ARBROS Communications Licensing Company S.E., LLC - Order Canceling Certificates
P-975, SUB 2 (04/15/2002)

AS Telecommunications, Inc. - Order Canceling Certificate
P-391, SUB 4 (03/12/2002)

BlueStar Networks, Inc. - Order Canceling Certificate
P-847, SUB 3 (07/22/2002)

ORDERS AND DECISIONS LISTED

BCGI Communications Corp. - Order Canceling Certificate
P-925, SUB 1 (11/14/2002)

Broadslate Networks of North Carolina, Inc. - Order Canceling Certificates
P-883, SUB 3 (03/21/2002)

CenturyTel Telecommunications, Inc. - Order Canceling Certificate
P-484, SUB 3 (02/15/2002)

Compass Telecommunications, Inc. - Order Canceling Certificate
P-899, SUB 1 (03/22/2002)

Convergent Communications Services, Inc. - Order Canceling Certificate
P-793, SUB 2 (04/29/2002)

CoreComm North Carolina, Inc. - Order Canceling Certificate
P-911, SUB 2 (08/21/2002)

Carolina Broadband, Inc. - Order Canceling Certificates
P-987, SUB 3 (09/24/2002)

Central Billing, Inc. - Order Canceling Certificate
P-1164, SUB 1 (12/20/2002)

Hotel Connect Management, Inc. - Order Canceling Certificate
P-946, SUB 1 (03/06/2002)

Incomnet Communications Corporation - Order Canceling Certificate
P-423, SUB 3 (08/21/2002)

KenDav Industries, Inc. - Order Canceling Certificate
P-947, SUB 1 (08/21/2002)

Keen LD, Inc. - Order Canceling Certificate
P-1123, SUB 1 (05/29/2002)

Network Plus, Inc. - Order Allowing Petition and Imposing Requirements
P-314, SUB 4 (04/12/2002)

Net2000 Communication Services, Inc. - Order Canceling Certificates
P-719, SUB 2 (01/29/2002)

Northwestern Digital Company - Order Canceling Certificate and Closing Docket
P-983, SUB 1 (03/07/2002)

NxGen Networks, Inc. - Order Canceling Certificate
P-1069, SUB 2 (04/23/2002)

Picus Communications, LLC - Order Canceling Certificate
P-923, SUB 1 (02/05/2002)

RCN Telecom Services, Inc. - Order Canceling Certificate
P-906, SUB 1 (08/07/2002)

Satellink Paging, LLC - Order Canceling Certificate
P-715, SUB 1 (10/08/2002)

Speer Communications Virtual Media, Inc. - Order Canceling Certificate
P-813, SUB 1 (01/24/2002)

Speer Virtual Media, Ltd. - Order Granting Motion to Cancel Certificate and Closing Docket
P-655, SUB 1 (03/07/2002)

Telergy Network Services, Inc. - Order Canceling Certificates
P-994, SUB 3 (07/29/2002)

Toledo Area Telecommunications Systems, Inc., d/b/a Buckeye TeleSystems - Order Canceling Certificate
P-1082, SUB 1 (09/19/2002)

U S WEST Long Distance, Inc. - Order Canceling Certificate
P-603, SUB 2 (02/12/2002)

USA Digital, Inc. - Order Canceling Certificate
P-1025, SUB 2 (11/07/2002)

Viatel Services, Inc. - Order Canceling Certificate
P-565, SUB 3 (02/14/2002)

3rdWire, Inc. - Order Canceling Certificates
P-1071, SUB 2 (05/30/2002)

TELECOMMUNICATIONS - Certificate

BellSouth Long Distance, Inc. - Order Amending Certificate
P-654, SUB 2 (09/24/2002)

Essex Communications, Inc. - Errata Order
P-1049, SUB 0 (02/18/2002)

LecStar Telecom, Inc., f/k/a Empire Telecom Services, Inc. - Order Amending Certificate of Public Convenience and Necessity
P-914, SUB 3 (03/01/2002)

Tritell DSL, Inc. - Order Dismissing Applications
P-938, SUB 0; P-938, SUB 1 (05/30/2002)

Verizon South, Inc. - Order Allowing Withdrawal of Application
P-19, SUB 353 (02/25/2002)

Williams Local Network, Inc. - Order Granting Motion to Withdraw Application and Closing Docket
P-963, SUB 0 (02/21/2002)

TELECOMMUNICATIONS - Complaint

ALLTEL Communications, Inc. - Order Dismissing Complaint with Prejudice of BellSouth Telecommunications, Inc.
P-514, SUB 20 (05/13/2002)

AT&T Communications of the Southern States, LLC - Order Dismissing Complaint and Closing Docket (Profilform, US, Inc.)
P-140, SUB 83 (10/30/2002)

BellSouth Telecommunications, Inc. - Order Closing Docket
P-55, SUB 1161 (01/23/2002)

BellSouth Telecommunications, Inc. - Order Concerning Closure of Docket (ICG Telecom Group, Inc.)
P-55, SUB 1163 (08/28/2002)

BellSouth Telecommunications, Inc. - Order Closing Docket (in Complaint of MCImetro Access Transmission Services, LLC)
P-55, SUB 1167 (04/01/2002)

BellSouth Telecommunications, Inc. - Order Ruling on Exceptions and Dismissing Complaint (Samuel and Patsy D. Gordon)
P-55, SUB 1234 (04/11/2002); Order Denying Stay (04/30/2002)

BellSouth Telecommunications, Inc. - Order Dismissing Complaint and Closing Docket (Marilyn Jean Duncan)
P-55, SUB 1293 (02/18/2002)

BellSouth Telecommunications, Inc. - Order Dismissing Complaint (Michael Tove)
P-55, SUB 1328 (03/21/2002)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order Dismissing Complaint and Closing Docket (Mr. Lem Rachels - Lem's Auto Sales)
P-55, SUB 1330 (02/11/2002)

BellSouth Telecommunications, Inc. - Order Dismissing Complaint (ALLTEL Communications, Inc.)
P-55, SUB 1343 (06/11/2002)

BellSouth Telecommunications, Inc. - Order Disapproving Proposed Tariff
P-55, SUB 1365; P-55, SUB 1366 (08/13/2002)

BellSouth Telecommunications, Inc. - Order Dismissing Complaint and Closing Docket (David Welch)
P-55, SUB 1390 (12/10/2002)

BellSouth Telecommunications, Inc. - Order Holding Docket in Abeyance
P-55, SUB 1391 (11/15/2002)

Broadwing Communications Services, Inc. - Order Dismissing Complaint without Prejudice (Carolina Telephone and Telegraph Company and Central Telephone Company)
P-454, SUB 9 (09/30/2002)

Carolina Telephone and Telegraph Company - Order Dismissing Complaint (KMC Telecom III, Inc. and KMC Telecom V, Inc.)
P-7, SUB 980; P-10, SUB 622 (06/11/2002)

Carolina Telephone and Telegraph Company - Order Dismissing Complaint and Closing Docket (George Marshbourne)
P-7, SUB 991 (02/11/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Dismissing Complaint (Enforcement of Interconnection Agreement with ALEC, Inc.)
P-7, SUB 995; P-10, SUB 633 (11/18/2002)

Carolina Telephone and Telegraph Company - Order Closing Docket (Complaint of Jimmy Hopkins)
P-7, SUB 1016 (09/06/2002)

Complaint - Telephone - Order Allowing Withdrawal of Complaint, Entering Dismissal and Closing Docket in Complaint of AT&T Communications of the Southern States Against Carolina Telephone and Telegraph Company and Central Telephone Company
P-89, SUB 75 (01/10/2002)

Complaint - Telephone - Order Closing Docket in Complaint of James F. Bowdish Against AT&T Communications of the Southern States, Inc., and BellSouth Telecommunications, Inc.
P-89, SUB 77 (02/12/2002)

ORDERS AND DECISIONS LISTED

Complaint - Telephone - Order Closing Docket in Complaint of Marguerite Ethridge Against BellSouth Telecommunications, Inc., and AT&T Communications of the Southern States, Inc.
P-89, SUB 78 (04/09/2002)

Complaint - Telephone - Order Ruling on Contract Provisions in Complaint of ALLTEL Carolina, Inc. Against CTC Exchange Services, Inc. and Carolina Income Management Group
P-89, SUB 79 (08/15/2002); Order Denying Motions for Reconsideration (12/04/2002)

Concord Telephone Company - Order Dismissing Proceeding and Closing Docket
P-16, SUB 202 (04/22/2002)

Concord Telephone Company - Order Dismissing Complaint of CAT Communications International, Inc. and the National ALEC Association/Prepaid Communications Association Against Concord Telephone Company
P-16, SUB 207 (08/27/2002)

Empire Communications Corporation - Order Closing Docket in Complaint of Kimberly Calhoun, Howard Swartz, Robert Holmes, and Christopher Cedrone
P-804, SUB 2 (02/11/2002)

Excel Telecommunications, Inc. - Order Dismissing Complaint and Closing Docket (Jack and Kristie Grossman)
P-270, SUB 14 (02/25/2002)

Madison River Communications, LLC - Order Closing Docket in Complaint of GoeIst USA, LLC
P-736, SUB 3 (01/02/2002)

VarTec Telecom, Inc. - Order Dismissing Complaint with Prejudice (BellSouth Telecommunications, Inc.)
P-362, SUB 8 (05/17/2002)

Verizon South, Inc. - Order Dismissing Complaint Without Prejudice (Time Warner Telecom of North Carolina, L.P.)
P-19, SUB 441 (09/30/2002)

Verizon South, Inc. - Order Dismissing Complaint and Closing Docket (Madison River Communications)
P-19, SUB 442 (11/15/2002)

ORDERS AND DECISIONS LISTED

TELECOMMUNICATIONS - Contracts/Agreements

ALLTEL Carolina, Inc. - Order Approving Interconnection Agreement with North Carolina Telcom, LLC
P-118, SUB 117 (02/06/2002)

ALLTEL Carolina, Inc. - Order Approving Interconnection Agreement with OneTone Telecom, Inc.
P-118, SUB 119 (06/27/2002)

ALLTEL Carolina, Inc. - Order Approving Interconnection Agreement with ICG Communications, Inc.
P-118, SUB 120 (06/27/2002)

ALLTEL Carolina, Inc. - Order Approving Interconnection Agreement with Level 3 Communications, LLC
P-118, SUB 121 (08/01/2002)

ALLTEL Carolina, Inc. - Order Approving Resale Agreement with Budget Phone, Inc.
P-118, SUB 123 (12/12/2002)

AT&T Communications of the Southern States, LLC - Order Closing Docket
P-140, SUB 50 (03/18/2002)

AT&T Communications of the Southern States, LLC - Order Approving Amendment to Interconnection Agreement with BellSouth Telecommunications, Inc.
P-140, SUB 73 (09/19/2002); Order Approving Amendment to Interconnection Agreement with BellSouth Telecommunications, Inc. (12/09/2002)

BellSouth Telecommunications, Inc. - Order Closing Dockets
P-55, SUB 1027; P-55, SUB 1094; P-55, SUB 1096 (04/11/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with ITC^DeltaCom Communications, Inc.
P-55, SUB 1036 (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Business Telecom, Inc.
P-55, SUB 1212 (11/04/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Birch Telecom of the South, Inc.
P-55, SUB 1228 (12/09/2002)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with NuVox Communications, Inc.
P-55, SUB 1231 (02/06/2002); Order Approving Amendments to Interconnection Agreement with NuVox Communications, Inc. (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with XSPEDIUS Corporation
P-55, SUB 1251 (05/23/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with IDS Telecom, LLC
P-55, SUB 1256 (05/23/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Telephone Company of Central Florida, Inc.
P-55, SUB 1260 (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Allegiance Telecom of North Carolina, Inc.
P-55, SUB 1284 (01/25/2002)

BellSouth Telecommunications, Inc. - Order Closing Docket
P-55, SUB 1286 (02/28/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Phone-Link, Inc.
P-55, SUB 1287 (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with NOS Communications, Inc.
P-55, SUB 1289 (11/05/2002); Order Approving Amendment to Interconnection Agreement with NOS Communications, Inc. (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Broadslate Networks of North Carolina, Inc.
P-55, SUB 1290 (01/25/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Access Point, Inc.
P-55, SUB 1295 (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Level 3 Communications, LLC
P-55, SUB 1297 (12/19/2002)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order Approving Amendments to Interconnection Agreement with NOW Communications, Inc.
P-55, SUB 1299 (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Madison River Communications, LLC
P-55, SUB 1304 (11/04/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with NewSouth Communications Corporation
P-55, SUB 1305 (02/06/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with One Point Communications-Georgia, L.L.C.
P-55, SUB 1306 (05/23/2002); Order Approving Amendment to Interconnection Agreement with One Point Communications-Georgia, L.L.C. (12/09/2002)

BellSouth Telecommunications, Inc. - Order Closing Docket
P-55, SUB 1310 (02/28/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with US LEC of North Carolina, Inc.
P-55, SUB 1311 (12/09/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendments to Interconnection Agreement with Access Integrated Networks, Inc.
P-55, SUB 1312 (12/09/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Network Telephone Corporation
P-55, SUB 1315 (05/23/2002); Order Approving Amendments to Interconnection Agreement with Network Telephone Corporation (06/27/2002); Order Approving Amendment to Interconnection Agreement with Network Telephone Corporation (11/05/2002); Order Approving Amendment to Interconnection Agreement with Network Telephone Corporation (12/09/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Lightyear Communications, Inc.
P-55, SUB 1317 (12/09/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Metromedia Fiber Network Services, Inc.
P-55, SUB 1319 (06/27/2002)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with SBC Telecom, Inc.
P-55, SUB 1323 (05/23/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Cbeyond Communications, LLC
P-55, SUB 1324 (05/23/2002); Order Approving Amendment to Interconnection Agreement with Cbeyond Communications, LLC (12/10/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with CRG International, Inc., d/b/a Network One
P-55, SUB 1327 (01/25/2002)

BellSouth Telecommunications, Inc. - Order Approving Amendment to Interconnection Agreement with Aura Communications, Inc.
P-55, SUB 1329 (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with VarTec Telecom, Inc.
P-55, SUB 1331 (02/06/2002); Order Approving Amendment to Interconnection Agreement with VarTec Telecom, Inc. (05/23/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with DukeNet Communications, LLC
P-55, SUB 1332 (01/25/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Corotel, LLC, d/b/a Springboard Telecom
P-55, SUB 1333 (01/25/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Annox, Inc.
P-55, SUB 1334 (02/06/2002); Order Approving Amendment to Interconnection Agreement with Annox, Inc. (05/23/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Crystal Clear Connections, Inc.
P-55, SUB 1335 (01/25/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement and Amendment with WinStar Wireless, Inc.
P-55, SUB 1336 (02/06/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with American Fiber Network, Inc.
P-55, SUB 1337 (01/25/2002)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with UNICOM Communications, LLC
P-55, SUB 1338 (02/06/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Network Plus, Inc.
P-55, SUB 1339 (04/04/2002); Order Approving Amendment to Interconnection Agreement with Network Plus, Inc. (06/27/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with TeleConex, Inc.
P-55, SUB 1341 (04/04/2002); Order Approving Amendment to Interconnection Agreement with TeleConex, Inc. (12/10/2002)

BellSouth Telecommunications, Inc.-Order Approving Interconnection Agreement with MCI WorldCom Communications, Inc.
P-55, SUB 1342 (04/04/02); Order Approving Amendment to Interconnection Agreement with MCI WorldCom Communications, Inc. (11/04/02)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Lee Communications, Inc.
P-55, SUB 1344 (05/23/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Global Connection, Inc. of North Carolina
P-55, SUB 1345 (05/23/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with DIECA Communications, Inc., d/b/a Covad Communications Company
P-55, SUB 1346 (05/23/2002); Order Approving Amendments to Interconnection Agreement with DIECA Communications, Inc., d/b/a Covad Communications Company (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement and Amendments with LecStar Telecom, Inc.
P-55, SUB 1348 (05/23/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Excel Telecommunications, Inc.
P-55, SUB 1349 (05/23/2002); Order Approving Amendment to Interconnection Agreement with Excel Telecommunications, Inc. (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Choctaw Communications, Inc.
P-55, SUB 1350 (05/23/2002)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with GSIwave.com, Inc.
P-55, SUB 1351 (05/23/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with QuantumShift Communications, Inc.
P-55, SUB 1352 (06/27/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with New Edge Network, Inc.
P-55, SUB 1353 (06/27/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Local Line America, Inc.
P-55, SUB 1354 (06/27/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Max-Tel Communications, Inc.
P-55, SUB 1355 (06/27/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement and Amendments with Momentum Business Solutions, Inc.
P-55, SUB 1356 (08/01/2002); Order Approving Amendment to Interconnection Agreement with Momentum Business Solutions, Inc. (11/05/2002); Order Approving Amendment to Interconnection Agreement with Momentum Business Solutions, Inc. (12/10/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Ernest Communications, Inc.
P-55, SUB 1357 (08/14/2002); Order Approving Amendments to Interconnection Agreement with Ernest Communications, Inc. (12/10/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Essex Communications, Inc.
P-55, SUB 1358 (08/14/2002); Order Approving Amendment to Interconnection Agreement with Essex Communications, Inc. (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Budget Phone, Inc.
P-55, SUB 1359 (08/14/2002)

BellSouth Telecommunications, Inc. - Order Approving Resale Agreement with Verizon Select Services, Inc.
P-55, SUB 1360 (08/14/2002)

ORDERS AND DECISIONS LISTED

BellSouth . Telecommunications, Inc. - Order Approving Resale Agreement with DPI Teleconnect, LLC
P-55, SUB 1361 (08/14/2002)

BellSouth Telecommunications, Inc. - Order Approving Resale Agreement with Local Telecom, LLC
P-55, SUB 1362 (08/14/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Matthews Radio Service
P-55, SUB 1363 (08/14/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Network Services, LLC
P-55, SUB 1364 (08/14/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with CaroNet, Inc.
P-55, SUB 1369 (08/14/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Lightyear Communications, Inc.
P-55, SUB 1370 (09/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Sprint Communications Company Limited Partnership, Sprint Communications Company, L.P., and Sprint Spectrum L.P.
P-55, SUB 1371 (09/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with The Other Phone Company, Inc.
P-55, SUB 1372 (09/19/2002); Order Approving Amendment to Interconnection Agreement with The Other Phone Company, Inc. (12/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Image Access, Inc.
P-55, SUB 1374 (09/19/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Alternative Phone, Inc.
P-55, SUB 1377 (11/01/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with AmeriMex Communications Corporation
P-55, SUB 1378 (11/01/2002)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with InterLink Telecommunications, Inc.
P-55, SUB 1379 (11/01/2002)

BellSouth Telecommunications, Inc. - Order Approving Resale Agreement with Delta Phones, Inc.
P-55, SUB 1380 (11/01/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Navigator Telecommunications, LLC
P-55, SUB 1381 (11/01/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with GSIwave.com, Inc.
P-55, SUB 1382 (11/01/2002)

BellSouth Telecommunications, Inc. - Order Approving Resale Agreement with United States Telecommunications, Inc.
P-55, SUB 1383 (11/01/2002)

BellSouth Telecommunications, Inc. - Order Approving Resale Agreement with LTS of Rocky Mount, LLC
P-55, SUB 1385 (11/01/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Wave Telecom, Inc.
P-55, SUB 1386 (12/10/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with Delta Phones, Inc.
P-55, SUB 1387 (12/10/2002)

BellSouth Telecommunications, Inc. - Order Approving Interconnection Agreement with USA Telecom, Inc.
P-55, SUB 1388 (12/10/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Amendment to Interconnection Agreement with KMC Telecom II, Inc.
P-7, SUB 947; P-10, SUB 589 (10/16/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Amendment to Interconnection Agreement with KMC III, Inc.
P-7, SUB 957; P-10, SUB 600 (10/16/2002)

ORDERS AND DECISIONS LISTED

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Amendment to Interconnection Agreement with KMC Telecom V, Inc.
P-7, SUB 958; P-10, SUB 601 (10/16/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Amendment to Interconnection Agreement with Ready Telecom, Inc.
P-7, SUB 967; P-10, SUB 609 (04/04/2002); Order Approving Amendment to Interconnection Agreement with Ready Telecom, Inc. (08/01/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Resale Agreement with Delta Phones, Inc.
P-7, SUB 971; P-10, SUB 613 (03/01/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with Madison River Communications, LLC
P-7, SUB 992; P-10, SUB 631 (02/06/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with NOW Communications, Inc.
P-7, SUB 998; P-10, SUB 636 (04/04/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with ComScape Telecommunications, Inc.
P-7, SUB 999; P-10, SUB 637 (04/04/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with ComScape Communications, Inc.
P-7, SUB 1000; P-10, SUB 638 (04/04/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with Network Telephone Corporation
P-7, SUB 1001; P-10, SUB 639 (06/27/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with CTC Exchange Services, Inc.
P-7, SUB 1002; P-10, SUB 640 (06/27/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with MCImetro Access Transmission Services, LLC
P-7, SUB 1003; P-10, SUB 641 (08/01/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with MCI WorldCom Communications, Inc.
P-7, SUB 1004; P-10, SUB 642 (08/01/2002)

ORDERS AND DECISIONS LISTED

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with Intermedia Communications, Inc.
P-7, SUB 1005; P-10, SUB 643 (08/01/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with DSLnet Communications, LLC
P-7, SUB 1006; P-10, SUB 644 (08/01/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with SkyBest Communications, Inc.
P-7, SUB 1007; P-10, SUB 645 (08/01/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with ICG Telecom Group, Inc.
P-7, SUB 1008; P-10, SUB 646 (08/01/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with Level 3 Communications, LLC
P-7, SUB 1009; P-10, SUB 647 (08/15/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with Metrocall, Inc.
P-7, SUB 1010; P-10, SUB 648 (08/15/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Collocation Agreement with Interlink Telecommunications, LLC
P-7, SUB 1011; P-10, SUB 649 (08/15/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with Interlink Telecommunications, LLC
P-7, SUB 1012; P-10, SUB 650 (08/15/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Amendment to Interconnection Agreement with Phone-Link, Inc.
P-7, SUB 1014; P-10, SUB 651 (08/15/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with Alternative Phone, Inc.
P-7, SUB 1015; P-10, SUB 652 (08/15/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with GSIwave.com, Inc.
P-7, SUB 1017; P-10, SUB 653 (09/18/2002)

ORDERS AND DECISIONS LISTED

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement and Amendment with United States Cellular, Inc.
P-7, SUB 1018; P-10, SUB 654 (10/16/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Resale Agreement with Atkom, LLC
P-7, SUB 1019; P-10, SUB 655 (10/16/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with VoiceStream Wireless Corporation
P-7, SUB 1020; P-10, SUB 656 (10/16/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement and Amendment with E-Z Tel, Inc.
P-7, SUB 1021; P-10, SUB 657 (10/16/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with @ Communications, Inc.
P-7, SUB 1023; P-10, SUB 659 (12/12/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with Level 3 Communications, LLC
P-7, SUB 1024; P-10, SUB 660 (12/12/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with AT&T Communications of the Southern States, LLC
P-7, SUB 1025; P-10, SUB 661 (12/12/2002)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order Approving Interconnection Agreement with TCG of the Carolinas, Inc.
P-7, SUB 1026; P-10, SUB 662 (12/12/2002)

Citizens Telephone Company - Order Approving Interconnection Agreement with Cingular Wireless, LLC
P-12, SUB 100 (02/06/2002)

Concord Telephone Company - Order Approving Interconnection Agreement with North Carolina Telcom, LLC
P-16, SUB 204 (04/04/2002)

Concord Telephone Company - Order Approving Interconnection Agreement with Level 3 Communications, LLC
P-16, SUB 209 (09/19/2002); Order Approving Amendment to Interconnection Agreement with Level 3 Communications, LLC (12/12/2002)

ORDERS AND DECISIONS LISTED

Concord Telephone Company - Order Approving Interconnection Agreement with KMC Telecom III, LLC and KMC Telecom V, Inc.
P-16, SUB 210 (09/19/2002)

Concord Telephone Company - Order Approving Interconnection Agreement with TeleConex, Inc.
P-16, SUB 211 (12/12/2002)

Global NAPs North Carolina, Inc. – Recommended Arbitration Order
P-1141, SUB 1 (11/27/2002)

North State Telephone Company - Order Approving Amendment to Interconnection Agreement with Cricket Communications, Inc.
P-42, SUB 132 (10/16/2002)

Verizon South, Inc. - Order Approving Amendments to Interconnection Agreement with Verizon Wireless
P-19, SUB 295 (12/12/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with North Carolina #4, Inc., d/b/a US Cellular
P-19, SUB 299 (09/19/2002)

Verizon South, Inc. - Order Approving Amendments to Interconnection Agreement with BellSouth Personal Communications, Inc.
P-19, SUB 302 (08/01/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with Nextel South Corporation
P-19, SUB 312 (12/12/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with Triton PCS Operating Company, LLC
P-19, SUB 315 (08/14/2002); Order Approving Amendment to Interconnection Agreement with Triton PCS Operating Company, LLC (12/12/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with Sprintcom, Inc., d/b/a Sprint PCS
P-19, SUB 322 (08/14/2002); Order Approving Amendment to Interconnection Agreement with Sprintcom, Inc., d/b/a Sprint PCS (09/19/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with Network Access Solutions Corporation
P-19, SUB 339 (08/14/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with Madison River Communications, LLC
P-19, SUB 346 (01/25/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with AT&T Wireless Services, Inc.
P-19, SUB 347 (08/01/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with NewSouth Communications Corporation
P-19, SUB 357 (01/25/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with ComScape Communications, Inc.
P-19, SUB 383 (12/12/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with ComScape Telecommunications, Inc.
P-19, SUB 384 (12/12/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with LecStar Telecom, Inc.
P-19, SUB 392 (12/12/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with Phone-Link, Inc.
P-19, SUB 395 (09/19/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with TeleConex, Inc.
P-19, SUB 397 (09/19/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with Level 3 Communications, LLC
P-19, SUB 399 (12/12/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with Telephone Company of Central Florida, Inc.
P-19, SUB 404 (09/19/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with One Point Communications-Georgia, LLC
P-19, SUB 410 (09/19/2002)

ORDERS AND DECISIONS LISTED

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with QuantumShift Communications, Inc.
P-19, SUB 415 (09/19/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with 1-800-RECONEX, Inc.
P-19, SUB 416 (08/01/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with Delta Phones, Inc.
P-19, SUB 419 (08/14/2002)

Verizon South, Inc. - Order Approving Amendment to Interconnection Agreement with IDS Telcom, L.L.C.
P-19, SUB 423 (09/19/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with Ciera Network Systems, Inc.
P-19, SUB 424 (01/25/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with NOW Communications, Inc.
P-19, SUB 425 (01/25/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with Ganoco, Inc., d/b/a American Dial Tone
P-19, SUB 426 (01/25/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with VarTec Telecom, Inc.
P-19, SUB 427 (01/25/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with NationNet Communications Corporation
P-19, SUB 428 (01/25/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with North Carolina Telcom, LLC
P-19, SUB 431 (04/04/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with Budget Phone, Inc.
P-19, SUB 433 (04/04/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with AmeriMex Communications Corporation
P-19, SUB 435 (06/27/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with SBC Telecom, Inc.
P-19, SUB 436 (06/27/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with Excel Telecommunications, Inc.
P-19, SUB 437 (06/27/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with ICG Telecom Group, Inc.
P-19, SUB 438 (06/27/2002); Order Approving Amendments to Interconnection Agreement with ICG Telecom Group, Inc. (08/01/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with American Fiber Network, Inc.
P-19, SUB 440 (06/27/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with Ernest Communications, Inc.
P-19, SUB 443 (08/01/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with CTC Exchange Services, Inc.
P-19, SUB 444 (08/01/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with E-Z Tel, Inc.
P-19, SUB 445 (08/14/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with Sprint Communications Limited Partnership
P-19, SUB 446 (10/16/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with Universal Telecom, Inc.
P-19, SUB 447 (09/19/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with Caronet, Inc.
P-19, SUB 448 (10/16/2002); Order on Amendment to Interconnection Agreement with Caronet, Inc. (12/12/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with Access Point, Inc.
P-19, SUB 449 (09/19/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with QuantumShift Communications, Inc.
P-19, SUB 450 (10/16/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with Unicom Communications, LLC
P-19, SUB 451 (12/12/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with KMC Telecom III, LLC
P-19, SUB 452 (12/12/2002)

Verizon South, Inc. - Order Approving Interconnection Agreement with New East Telephony, Inc.
P-19, SUB 453 (12/12/2002)

ALLTEL Communications, Inc. – Order Approving Interconnection Agreement with BellSouth Telecommunications, Inc.
P-514, SUB 18 (02/06/2002)

TELECOMMUNICATIONS - Discontinuance

Cable & Wireless USA, Inc. - Order Approving Transfer of Customers
P-200, SUB 15; P-390, SUB 7 (02/20/2002)

Intermedia Communications Inc. - Order Closing Docket
P-504, SUB 13 (12/16/2002)

Mpower Communication Corp. - Order Allowing Discontinuation of Service
P-934, SUB 4 (03/04/2002)

TELECOMMUNICATIONS - EAS

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service
P-7, SUB 988 (06/18/2002)

Carolina Telephone and Telegraph Company - Order Approving Extended Area Service
P-7, SUB 994 (01/30/2002)

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service
P-7, SUB 997 (09/26/2002)

Carolina Telephone and Telegraph Company - Order Approving EAS
P-7, SUB 1013 (07/09/2002)

Concord Telephone Company - Order Approving EAS
P-16, SUB 205 (06/12/2002)

ORDERS AND DECISIONS LISTED

TELECOMMUNICATIONS - Certificates

Certificates Issued - Local

Company	Docket No.	Date
Atkcom, LLC	P-1193, Sub 0	(07/10/2002)
BasicPhone, Inc.	P-1134, Sub 0	(08/05/2002)
BullsEye Telecom, Inc.	P-1201, Sub 0	(11/06/2002)
Campus Communications Group, Inc.	P-1192, Sub 0	(09/25/2002)
Dialog Small Business Alliance, Inc.	P-1171, Sub 1	(04/19/2002)
Essex Communications, Inc.	P-1049, Sub 0	(01/30/2002)
FeroNetworks, Inc.	P-1227, Sub 0	(10/28/2002)
FLATEL, Inc.	P-1206, Sub 0	(09/13/2002)
Global NAPs North Carolina, Inc.	P-1141, Sub 0	(02/05/2002)
Granite Telecommunications, LLC	P-1195, Sub 1	(06/27/2002)
GSC Telecommunications, Inc.	P-1216, Sub 0	(10/07/2002)
LMK Communications, LLC	P-969, Sub 1	(06/21/2002)
MaxTel Wireless Communications, Inc.	P-1079, Sub 0	(02/27/2002)
Metro Teleconnect Companies, Inc.	P-1186, Sub 0	(06/21/2002)
Metrostat Communications, Inc.	P-1212, Sub 0	(11/13/2002)
Momentum Business Solutions, Inc.	P-1154, Sub 0	(01/29/2002)
NationNet Communications Corp.	P-1008, Sub 1	(02/04/2002)
NOS Communications, Inc.	P-265, Sub 3	(01/30/2002)
OneStar Long Distance, Inc.	P-355, Sub 9	(12/20/2002)
OneTone Telecom, Inc.	P-1159, Sub 1	(02/11/2002)
PNG Telecommunications, Inc., d/b/a PowerNet Global Communications	P-543, Sub 3	(06/11/2002)
Progress Telecom Corporation	P-1175, Sub 0	(07/01/2002)
Simflex Communications, Inc.	P-1156, Sub 0	(01/29/2002)
Surry Telecommunications, Inc.	P-965, Sub 1	(06/18/2002)
VIVO-NC, LLC	P-1073, Sub 1	(02/13/2002)
Wave Telecom, Inc.	P-1181, Sub 0	(07/18/2002)
Winstar Communications, LLC	P-1161, Sub 0	(03/18/2002)
Zaida Communications Corp., d/b/a Ez-Inbox	P-1194, Sub 1	(11/27/2002)

ORDERS AND DECISIONS LISTED

Certificates Issued – Long Distance

Company	Docket No.	Date
@CCESS, LLC, d/b/a NEXXTWORKS	P-1191, Sub 0	(07/10/2002)
All-Star Acquisition Corporation	P-1218, Sub 0	(09/23/2002)
Aura Communications, Inc.	P-1088, Sub 1	(01/31/2002)
BAK Communications, LLC	P-1148, Sub 0	(01/31/2002)
Broadview Networks, Inc.	P-1184, Sub 1	(04/18/2002)
Budget Phone, Inc.	P-794, Sub 2	(08/14/2002)
Buzz Telecom, Corporation	P-1221, Sub 0	(10/18/2002)
Central Billing, Inc.	P-1164, Sub 0	(02/05/2002)
Choice Telco, LLC	P-1209, Sub 0	(08/14/2002)
CI2, Inc.	P-881, Sub 1	(05/24/2002)
Communicate Technological Systems, LLC	P-1176, Sub 0	(04/05/2002)
Connect Communications, LLC	P-750, Sub 1	(05/06/2002)
Convergia, Inc.	P-1166, Sub 0	(08/30/2002)
Cytela Communications, Inc.	P-1145, Sub 1	(09/17/2002)
Dancris Telecom, LLC	P-1235, Sub 0	(11/25/2002)
Dialaround Enterprises, Inc.	P-1188, Sub 0	(05/24/2002)
Dialog Small Business Alliance, Inc.	P-1171, Sub 0	(03/18/2002)
Digizip.com, Inc.	P-1178, Sub 0	(04/24/2002)
ECI Communications, Inc., d/b/a ITS Network Services	P-1162, Sub 0	(01/29/2002)
Econodial, LLC	P-1203, Sub 0	(08/02/2002)
ePHONE Telecom, Inc.	P-1220, Sub 0	(09/25/2002)
Entrix Telecom, Inc.	P-1239, Sub 0	(12/09/2002)
Equal Access Communications, LLC, d/b/a Direct Access	P-1189, Sub 0	(05/06/2002)
FreedomStarr Communications, Inc., d/b/a Planet Earth Comm. & iPhonebill.com	P-928, Sub 0	(01/25/2002)
FOXTEL, INC.	P-1182, Sub 0	(04/05/2002)
Global Communications Consulting Corp.	P-1204, Sub 0	(08/14/2002)
Global Internetworking, Inc.	P-1179, Sub 0	(04/05/2002)
Gold Line Telemanagement, Inc.	P-1158, Sub 0	(01/07/2002)
Granite Telecommunications, LLC	P-1195, Sub 0	(05/24/2002)
Horizon Telecom, Inc.	P-1160, Sub 0	(01/17/2002)
Infonet Telecommunications Corp.	P-1157, Sub 0	(01/07/2002)
Intelecall Communications, Inc.	P-1213, Sub 0	(08/30/2002)
Kiger Telephone & Telephony, LLC	P-1167, Sub 0	(03/18/2002)
Legacy Long Distance International, Inc.	P-1173, Sub 0	(04/25/2002)
Line 1 Communications, LLC	P-1180, Sub 0	(04/05/2002)
Long Distance Billing Services, Inc.	P-1057, Sub 0	(03/14/2002)
Maxtel USA, Inc., d/b/a MTUSA, Inc.	P-1058, Sub 0	(05/31/2002)

ORDERS AND DECISIONS LISTED

Miko Telephone Communications, Inc.	P-1129, Sub 0	(01/31/2002)
National Directory Assistance, LLC	P-1172, Sub 0	(03/13/2002)
NECC Telecom, Inc.	P-1214, Sub 0	(08/30/2002)
NobelTel, LLC	P-1222, Sub 0	(10/09/2002)
North by NortheastCom LLC	P-1190, Sub 0	(05/15/2002)
North Carolina Telcom, LLC	P-1133, Sub 1	(02/06/2002)
NTERA, INC.	P-1125, Sub 0	(03/06/2002)
One Voice Communications, Inc.	P-1174, Sub 0	(04/25/2002)
ONELINK COMMUNICATIONS, INC.	P-1165, Sub 0	(02/26/2002)
OneTone Telecom, Inc.	P-1159, Sub 0	(01/07/2002)
ONYX TELCOM, INC.	P-1132, Sub 0	(01/31/2002)
Premier Telecom, Inc.	P-1217, Sub 0	(09/23/2002)
PromiseVision Technology, Inc.	P-1226, Sub 0	(10/17/2002)
QX Telecom, LLC	P-1146, Sub 0	(08/07/2002)
Radiant Telecom, Inc.	P-1130, Sub 0	(08/07/2002)
Resort Network Services, LLC	P-1163, Sub 0	(05/24/2002)
Teledias Communications, Inc.	P-1223, Sub 0	(10/09/2002)
Telenational Communications, Inc.	P-1183, Sub 0	(08/02/2002)
Telezon, Inc.	P-1225, Sub 0	(10/09/2002)
Telliss, LLC	P-1185, Sub 0	(04/18/2002)
Touchtone Communications Inc.	P-1224, Sub 0	(10/09/2002)
Twin City Capital, LLC, d/b/a Small Business America	P-1231, Sub 0	(11/21/2002)
Universal Broadband Communications, Inc.	P-1197, Sub 0	(06/13/2002)
WDT World Discount Telecommunications Co.	P-1196, Sub 0	(07/05/2002)
Wholesale Carrier Services, Inc.	P-1168, Sub 0	(02/21/2002)
Xtension Services, Inc.	P-1177, Sub 0	(04/01/2002)
Zaida Communications Corporation	P-1194, Sub 0	(05/24/2002)
3U Telecom, Inc.	P-1207, Sub 0	(08/14/2002)

Dominion Telecom, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-1136, SUB 1 (04/24/2002)

Enron Broadband Services, Inc. - Order Dismissing Application and Closing Docket
P-1024, SUB 0 (09/18/2002)

GoBeam Services, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-1080, SUB 1 (05/15/2002)

Intelligent Switching & Software, LLC - Order Allowing Application to be Withdrawn and Closing Docket
P-1127, SUB 0 (03/08/2002)

Interpath Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity
P-1059, SUB 1 (03/08/2002)

Looking Glass Networks, Inc. - Order Allowing Withdrawal of Application without Prejudice
P-1037, SUB 1 (02/11/2002)

OneTone Telecom, Inc. – Order Reissuing Certificate
P-1159, SUB 0 (01/10/2002)

OnFiber Carrier Services, Inc. - Order Allowing Withdrawal of Application
P-977, SUB 1 (02/19/2002)

SBC Telecom, Inc. - Recommended Order Granting a Certificate of Public Convenience and Necessity
P-936, SUB 1 (04/04/2002)

Sonix4U, Inc. - Order Requiring Penalty and Allowing Withdrawal of Application
P-1122, SUB 0 (06/26/2002)

Telecom Resources, Inc. - Order Dismissing Application
P-734, SUB 0 (03/08/2002)

Wave Telecom, Inc. - Recommended Order Granting a Certificate of Public Convenience and Necessity
P-1181, SUB 1 (07/01/2002)

TELECOMMUNICATIONS - Miscellaneous

Adelphia Business Solutions of North Carolina, L P - Order Closing Docket
P-1020, SUB 1 (01/08/2002)

Adelphia Business Solutions of North Carolina, L P - Order Closing Docket
P-1020, SUB 3 (12/16/2002)

ALLTEL Communications, Inc. - Order Ruling on ALLTEL Petition
P-514, SUB 21 (04/19/2002)

ALLTEL Communications, Inc. - Order Ruling on ALLTEL Petition
P-514, SUB 22 (10/09/2002)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order and Advisory Opinion Regarding Section 271 Requirements
P-55, SUB 1022 (07/09/2002)

BellSouth Telecommunications, Inc. - Order Closing Docket
P-55, SUB 1196 (03/12/2002)

BellSouth Telecommunications, Inc. - Order Ruling on BellSouth Petition
P-55, SUB 1347 (03/22/2002)

BellSouth Telecommunications, Inc. - Order Denying Promotion
P-55, SUB 1367 (06/25/2002)

BellSouth Telecommunications, Inc. - Order Ruling on the BellSouth Petition
P-55, SUB 1368 (07/18/2002)

BellSouth Telecommunications, Inc. - Order Ruling on the BellSouth Petition for Review
P-55, SUB 1375 (08/28/2002)

Carolina Telephone and Telegraph Company - Order Ruling on the Petition for Review
P-7, SUB 1022 (09/19/2002)

CTC Exchange Services, Inc. - Order Closing Docket
P-621, SUB 2 (05/29/2002)

Intermedia Communications Inc. - Order Closing Docket
P-504, SUB 12 (03/08/2002)

IDS Telecom, LLC - Order Closing Docket
P-1032, SUB 2 (03/04/2002)

Lockheed Martin Global Telecommunications Services, Inc. - Order Approving Transfer of Control
P-1081, SUB 1 (08/28/2002)

North State Telephone Company – Order Authorizing Price Regulation of North State Telephone Company
P-42, SUB 137 (08/21/2002); Errata Order (08/27/2002)

Sprint Communications Company L.P. - Order Closing Dockets
P-294, SUB 8; P-294, SUB 9 (03/05/2002)

Verizon South, Inc. - Order Ruling on the Verizon South, Inc. Petition
P-19, SUB 430 (02/12/2002)

ORDERS AND DECISIONS LISTED

TELECOMMUNICATIONS - Reports

Network Operator Services, Inc. - Order Suspending Monthly Reports
P-722, SUB 1; P-390, SUB 3; P-577, SUB 1 (04/19/2002)

TELECOMMUNICATIONS - Securities

Concord Telephone Company - Order Approving Authority to Repurchase Shares
P-16, SUB 208 (06/17/2002)

TELECOMMUNICATIONS - Show Cause

OneStar Long Distance, Inc. - Order Approving Consent Agreement
P-355, SUB 8; P-505, SUB 4; P-1113, SUB 3 (12/18/2002)

TELECOMMUNICATIONS – Tariff

BellSouth Telecommunications, Inc. - Order Allowing Tariff Subject to Modification
P-55, SUB 1394 (12/04/2002)

Carolina Telephone and Telegraph Company - Order Allowing Tariff Filings and Concerning Directory Assistance Allowance
P-7, SUB 825e; P-10, SUB 479e (06/19/2002); Errata Order (06/20/2002)

Carolina Telephone and Telegraph Company - Order Allowing Tariff Subject to Conditions
P-7, SUB 996; P-10, SUB 635 (02/20/2002)

Carolina Telephone and Telegraph Company - Order Allowing Tariff
P-7, SUB 1032; P-10, SUB 667 (12/18/2002)

Sprint Communications Company L.P. - Order Closing Docket (Tariff Filing to Introduce Sprint 50 at Home)
P-294, SUB 25 (01/28/2002)

TELECOMMUNICATIONS - Sale/Transfer

A.R.C. Networks, Inc. - Order Approving Customer Transfer
P-1105, SUB 2; P-389, SUB 5; P-384, SUB 3 (12/04/2002)

ORDERS AND DECISIONS LISTED

ATX Licensing, Inc., d/b/a ATX Telecommunications Services. - Order Approving Transfer of Control
P-972, SUB 2 (05/28/2002)

BellSouth Long Distance, Inc. - Order Approving Transfer of Customers
P-654, SUB 1; P-416, SUB 10 (07/30/2002)

Budget Call Long Distance, Inc. - Order Approving Transfer of Control
P-483, SUB 2; P-843, SUB 2; P-400, SUB 8; P-244, SUB 21; P-698, SUB 4 (11/14/2002)

Birch Telecom of the South, Inc. - Order Approving Transfer of Control
P-1000, SUB 2 (08/28/2002)

BT Communications Sales, LLC - Order Approving Transfer of Control
P-837, SUB 3 (01/25/2002)

Cable & Wireless USA, Inc. - Order Approving Customer Transfer
P-200, SUB 17; P-451, SUB 4 (10/15/2002)

Cable & Wireless USA, Inc. - Order Authorizing Discontinuance of Service
P-200, SUB 17 (12/20/2002)

Choctaw Communications, Inc. - Order Approving Transfer of Control
P-763, SUB 3 (08/28/2002

Comcast Business Communications, Inc. - Order Approving Transfer of Control
P-729, SUB 2 (03/20/2002)

E-Z Tel, Inc. - Order Approving Transfer of Control
P-656, SUB 6 (12/17/2002)

Easton Telecom Services, Inc. - Order Approving Transfer of a Certificate and Customers and Canceling a Certificate
P-471, SUB 3; P-1155, SUB 1 (04/25/2002)

Grande Communications Networks, Inc. - Order Approving Transfer of Control
P-978, SUB 1 (01/25/2002)

Incomnet Communications Corporation - Order Approving Transfer of Control
P-423, SUB 2 (01/25/2002)

Intercontinental Communications Group, Inc. - Order Canceling Certificate
P-588, SUB 2; P-612, SUB 2; P-612, SUB 1 (10/23/2002)

Intermedia Communications Inc. - Order Approving Customer Transfer
P-504, SUB 11; P-659, SUB 11 (10/11/2002)

ORDERS AND DECISIONS LISTED

Intermedia Communications Inc. - Order Approving Customer Transfer
P-504, SUB 14; P-1027, SUB 2 (11/14/2002)

Intrado, Inc., f/k/a State Communications Corp. - Order Approving Transfer of Certificate
P-1070, SUB 1; P-1187, SUB 0 (08/19/2002)

ITC DeltaCom Communications, Inc. - Order Approving Transfer of Control
P-500, SUB 16 (10/02/2002)

KMC Data, LLC - Order Approving Transfer of Control
P-1126, SUB 2 (03/20/2002)

KMC Telecom V, Inc. - Order Approving Transfer of Control
P-989, SUB 1 (03/20/2002)

LecStar Telecom, Inc. - Order Approving Transfer of Customers
P-914, SUB 4; P-913, SUB 4 (06/17/2002)

Legent Communications - Order Approving Customer Transfer
P-1150, SUB 1; P-527, SUB 4 (10/07/2002)

LTS of Rocky Mount, LLC - Order Approving Transfer of Control
P-930, SUB 1 (05/28/2002)

Madison River Long Distance Solutions, Inc. - Order Approving Transfer of Certificate and Customers
P-749, SUB 1; P-1170, SUB 0 (03/20/2002)

McLeodUSA Telecommunications Services, Inc. - Order Approving Transfer of Control
P-617, SUB 3 (03/20/2002)

New Century Telecom, Inc. - Order Approving Transfer of Control
P-660, SUB 1 (03/20/2002)

New Century Telecom, Inc. - Order Approving Transfer of Control
P-660, SUB 1; P-660, SUB 2 (10/02/2002)

Norstan Network Services, Inc. - Order Approving Transfer of Control
P-306, SUB 2 (05/28/2002)

Navigator Telecommunications, LLC - Order Approving Customer Transfer
P-850, SUB 2; P-671, SUB 7 (10/23/2002)

North American Communications Control, Inc. - Order Approving Transfer of Customers
P-595, SUB 2; P-1105, SUB 1 (08/28/2002)

ORDERS AND DECISIONS LISTED

NUI Telecom, Inc. - Order Approving Transfer of Customers and Canceling Certificates
P-581, SUB 3; P-803, SUB 2 (05/28/2002)

One Call Communications, Inc. - Order Approving Transfer of Certificate
P-264, SUB 10; P-1198, SUB 0 (07/30/2002)

Progress Telecom Corporation - Order Approving Application
P-1175, SUB 0; P-708, SUB 8 (07/17/2002)

PT-1 Long Distance, Inc. - Order Approving Customer Transfer
P-948, SUB 2; P-541, SUB 4 (10/07/2002); Errata Order (10/14/2002)

Reliant Communications, Inc. - Order Approving Transfer of Control
P-760, SUB 2 (11/14/2002)

Startec Global Licensing Company - Order Approving Transfer of Control
P-773, SUB 1 (11/14/2002)

TeleConex, Inc. - Order Rescinding Order Approving Transfer of Control and Closing Docket
P-745, SUB 1 (08/28/2002)

Touch America, Inc. - Order Approving Transfer of Control
P-1062, SUB 1 (01/25/2002)

TAC License Corp. - Order Approving Transfer of Control
P-1138, SUB 0; P-870, SUB 5 (07/09/2002)

U.S. TelePacific Corp, d/b/a TelePacific Communications. - Order Approving Transfer of Control
P-971, SUB 2 (07/30/2002)

Voicecom Telecommunications, LLC - Order Approving Customer and Certificate Transfer
P-1219, SUB 0; P-380, SUB 7 (11/14/2002)

Winstar Wireless, Inc. - Order Approving Transfer of Certificate and Customers
P-783, SUB 3; P-1161, SUB 0 (04/04/2002)

WorldxChange Corp. - Order Approving Transfer of Customers
P-1007, SUB 1; P-632, SUB 3 (07/30/2002)

WorldxChange Corp. - Order Approving Transfer of Control
P-1007, SUB 2 (10/02/2002)

XO North Carolina, Inc. - Order Approving Transfer of Control
P-732, SUB 3; P-890, SUB 2 (05/28/2002); Order Granting Motion to Amend Previous Order (11/15/2002)

360networks (USA) Inc. - Order Approving Transfer of Control
P-888, SUB 2 (12/04/2002)

SPECIAL CERTIFICATE/PSP

SPECIAL CERTIFICATE/PSP - Cancellation of Certificate

Abbott Laboratories - Order Canceling PSP Certificate
SC-86, SUB 1 (11/12/2002)

Atlantic Coast Communications, Inc. - Order Canceling PSP Certificate
SC-1322, SUB 1 (01/11/2002)

Atlantic Public Telephone Corporation - Order Canceling PSP Certificate
SC-1623, SUB 1 (08/28/2002)

Blayco Pay Phone; Elaine Lockhead, d/b/a - Order Canceling PSP Certificate
SC-1609, SUB 1 (12/10/2002)

C.C., Inc. - Order Canceling PSP Certificate
SC-1593, SUB 1 (09/25/2002)

Central Piedmont Payphone Company; Dale B. Harris, d/b/a - Order Canceling PSP Certificate
SC-993, SUB 2 (04/29/2002)

Cherokee Telephone Co., Inc. - Order Canceling PSP Certificate
SC-1630, SUB 1 (10/28/2002)

Coin-Tel, Inc. - Order Canceling PSP Certificate
SC-1597, SUB 1 (08/28/2002)

Couchell; George J. - Order Canceling PSP Certificate
SC-1370, SUB 1 (01/28/2002)

Crabtree; Orville R. - Order Canceling PSP Certificate
SC-1378, SUB 4 (02/13/2002)

Cutting Edge Communications Inc. - Order Canceling PSP Certificate
SC-1467, SUB 2 (03/14/2002)

Darnell, Wendy - Order Canceling PSP Certificate
SC-1631, SUB 1 (05/07/2002)

ORDERS AND DECISIONS LISTED

FayComm; Breslin & Associates, Inc., d/b/a - Order Canceling PSP Certificate
SC-1546, SUB 1 (01/16/2002)

Fortelco; John M. & Norman J. Fortson, d/b/a - Order Canceling PSP Certificate
SC-657, SUB 2 (10/28/2002)

Caribbean Cuisine Restaurant; George C. Thompson, d/b/a - Order Canceling PSP Certificate
SC-1419, SUB 2 (04/23/2002)

Hang It Up, LLC - Order Canceling PSP Certificate
SC-1479, SUB 1 (09/13/2002)

Henderson County Public Schools - Order Canceling PSP Certificate
SC-903, SUB 3 (10/28/2002)

Hoffer Flow Controls, Inc. - Order Canceling PSP Certificate
SC-845, SUB 1 (05/01/2002)

Home Real Estate Company - Order Canceling PSP Certificate
SC-414, SUB 1 (07/15/2002)

Holland; Tanner E. - Order Canceling PSP Certificate
SC-1639, SUB 1 (09/18/2002)

J & J Communication Enterprises; Yehuda J. & Judith S. Lev, d/b/a - Order Canceling PSP Certificate
SC-1634, SUB 1 (02/12/2002)

J & J Communications; John W. Pittman, d/b/a - Order Canceling PSP Certificate
SC-1424, SUB 2 (12/10/2002)

Jamison; R. Kenneth - Order Canceling PSP Certificate
SC-1288, SUB 1 (01/14/2002)

Laundry Room; The; Michael Aloia, d/b/a - Order Canceling PSP Certificate
SC-1420, SUB 1 (03/05/2002)

Leonard; Nolan - Order Canceling PSP Certificate
SC-663, SUB 2 (04/03/2002)

Maximum Communications; Donald E. Harris, d/b/a - Order Canceling PSP Certificate
SC-1311, SUB 1 (09/18/2002)

Mackey, Jr.; Charles - Order Canceling PSP Certificate
SC-1635, SUB 1 (06/14/2002)

ORDERS AND DECISIONS LISTED

Mountain Harbour Marina; Farr Enterprises, Inc., d/b/a - Order Canceling PSP Certificate
SC-1591, SUB 1 (07/01/2002)

Pacific Coin - Order Canceling PSP Certificate
SC-1482, SUB 2 (10/28/2002)

Payphone Research Services, Inc. - Order Canceling PSP Certificate
SC-1580, SUB 1 (01/08/2002)

Phillips; George David - Order Canceling PSP Certificate
SC-1557, SUB 1 (07/01/2002)

Quail Telephone; Edward Coffman, d/b/a - Order Canceling PSP Certificate
SC-1492, SUB 1 (06/12/2002)

Reger; Leo - Order Canceling PSP Certificate
SC-1262, SUB 2 (04/11/2002)

REDS; Well Informed, Inc., d/b/a - Order Canceling PSP Certificate
SC-1172, SUB 1 (09/30/2002)

Simplex Payphones; William D. Rubel, d/b/a - Order Canceling PSP Certificate
SC-799, SUB 2 (05/13/2002)

Smith; James Michael - Order Canceling PSP Certificate
SC-836, SUB 1 (07/29/2002)

Srimp Investments, Inc. - Order Canceling PSP Certificate
SC-1569, SUB 1 (03/14/2002)

Stonehouse Timber Lodge, Inc. - Order Canceling PSP Certificate
SC-1466, SUB 1 (01/29/2002)

Sty, Inc. - Order Canceling PSP Certificate
SC-913, SUB 2 (10/28/2002)

Spartan Ventures, Inc. - Order Canceling PSP Certificate
SC-1669, SUB 1 (01/15/2002)

Tailor; Chhabil - Order Canceling PSP Certificate
SC-1304, SUB 1 (06/14/2002)

Tanning Down Under; Lisa L. Horne, d/b/a - Order Canceling PSP Certificate
SC-1485, SUB 2 (09/10/2002)

ORDERS AND DECISIONS LISTED

Travel Resorts of America, Inc. - Order Canceling PSP Certificate
SC-1333, SUB 1 (02/21/2002)

Twinbrook Resort, LLC - Order Canceling PSP Certificate
SC-946, SUB 2 (02/04/2002)

The Fone Connection of Tampa Bay, Inc. - Order Canceling PSP Certificate
SC-1605, SUB 1 (03/07/2002)

Tienda Latina 2000; Juan Antonio Pereyra, d/b/a - Order Canceling PSP Certificate
SC-1603, SUB 1 (11/18/2002)

U.S. Label Corporation - Order Canceling PSP Certificate
SC-384, SUB 1 (06/05/2002)

Ven-Lux International, Inc. - Order Canceling PSP Certificate
SC-1461, SUB 1 (08/13/2002)

Zimmerman Pay Tell Management Systems, Inc.; Christopher Zimmerman d/b/a - Order Canceling PSP Certificate
SC-1552, SUB 1 (09/13/2002)

SPECIAL/PSP – Certificates Issued

Company	Docket No.	Date
Beech Mountain Resort, Inc.	SC-1703, SUB 0	(11/13/2002)
Berkshire Corporation	SC-1687, SUB 0	(06/03/2002)
Botsch; Paul	SC-1685, SUB 0	(05/22/2002)
Broyhill Furniture Industries, Inc.	SC-1676, SUB 0	(02/22/2002)
Budtel Associates	SC-1684, SUB 0	(05/13/2002)
Burg; J. Matthew; Plan B Industries, d/b/a	SC-1674, SUB 0	(02/07/2002)
Cardwell; Li	SC-1701, SUB 0	(09/25/2002)
Clark; Frank K.	SC-1698, SUB 0	(08/30/2002)
Critz; Nathan R.	SC-1693, SUB 0	(07/25/2002)
Crystal Clear Management, Inc.	SC-1672, SUB 0	(01/28/2002)
ECPI Colleges, Inc.	SC-1671, SUB 0	(01/08/2002)
Gosnell; E.M.	SC-1680, SUB 0	(04/01/2002)
Greenwood; James H.	SC-1699, SUB 0	(09/09/2002)
Harmony Music and Amusement Company, Inc.	SC-1678, SUB 0	(03/08/2002)
Haven; Ronald	SC-1682, SUB 0	(04/11/2002)

Hughes; Edward and Joanne, d/b/a Hughes Tele-Com	SC-1697, SUB 0	(08/20/2002)
Hunter; Gregory L., d/b/a G & B Communications	SC-1696, SUB 0	(08/16/2002)
International Payphone Corporation	SC-1688, SUB 0	(06/03/2002)
Jaroth, Inc.	SC-1705, SUB 0	(12/20/2002)
JDK Automotive, Inc.	SC-1702, SUB 0	(10/04/2002)
Mason Enterprises of MD, Inc.	SC-1700, SUB 0	(09/25/2002)
Mount Mitchell Lands, Inc.	SC-1675, SUB 0	(02/22/2002)
Neel; Daniel Brehm, d/b/a Wired Communications	SC-1614, SUB 1	(07/05/2002)
North Coast Payphones, Inc.	SC-1690, SUB 0	(06/13/2002)
Onslow Telephone Inc.	SC-1691, SUB 0	(08/30/2002)
Park; Kyung O.	SC-1679, SUB 0	(03/18/2002)
Phillips & Brooks/Gladwin, Inc.	SC-1704, SUB 0	(12/04/2002)
Phillips; Tina Marie	SC-1677, SUB 0	(02/26/2002)
Reynolds; David & Faye	SC-1686, SUB 0	(06/03/2002)
Schmidt; Robert P.	SC-1694, SUB 0	(07/25/2002)
Scott; Allen Lamont, d/b/a Intellicom	SC-1689, SUB 0	(06/13/2002)
Seabolt; Richard S.	SC-1695, SUB 0	(08/12/2002)
Snyder; Hal K.	SC-245, SUB 4	(08/05/2002)
Thacker; Johnathan M.	SC-1673, SUB 0	(02/08/2002)
Thomasville Furniture Industries, Inc.	SC-1681, SUB 0	(03/26/2002)
United House of Prayer for All People	SC-1692, SUB 0	(07/16/2002)
Woodard; Robin L.	SC-1683, SUB 0	(05/13/2002)

SPECIAL CERTIFICATE/PSP - Certificate

Broyhill Furniture Industries, Inc. - Errata Order
SC-1676, SUB 0 (04/01/2002)

SPECIAL CERTIFICATE/PSP - Miscellaneous

American Public Payphone Corporation - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1553, SUB 1 (06/21/2002)

Harrison; Michael - Order Reissuing PSP Certificate Due to Address Change
SC-1577, SUB 2 (02/08/2002)

M & B Communications; Johnny O. Milam, Jr., Jay S. Milam, Joel B. Milam, and Freddy L. Brown; d/b/a - Order Reissuing Special Certificate Due to Address Change
SC-1280, SUB 1 (07/05/2002)

McFadden Communications; Brian McFadden, d/b/a - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1539, SUB 3 (07/05/2002)

North Coast Payphones, Inc. - Order Reissuing Special Certificate Due to Address Change
SC-1690, SUB 1 (08/16/2002)

Tanning Down Under; Lisa L. Horne, d/b/a - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1485, SUB 1 (06/13/2002)

SPECIAL CERTIFICATE/PSP - Name Change

Daniel Payphones, Inc. - Order Reissuing Special Certificate Due to Telephone Number Change
SC-277, SUB 2 (04/26/2002)

National Telephone Company, L.L.C. - Order Reissuing Special Certificate Due to Address Change
SC-1662, SUB 1 (01/08/2002)

PADTEL Communications; PADCO, Inc., d/b/a - Order Reissuing Special Certificate Due to Address and Telephone Number Changes
SC-1544, SUB 1 (01/08/2002)

Taylor; Douglas M. - Order Reissuing Special Certificate Due to Address Change
SC-813, SUB 1 (02/28/2002)

Verizon South, Inc. - Order Reissuing Special Certificate Due to Name, Address and Telephone Number Changes
SC-1367, SUB 1 (01/08/2002)

SPECIAL CERTIFICATE/PSP – Canceling & Reinstating Certificate

Anderson; Richard M. – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1658, SUB 1 (06/10/2002)

Baumann; Jack – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1576, SUB 1 (06/18/2002)

ORDERS AND DECISIONS LISTED

BCL Communications; Bradley C. Lindsley, d/b/a. – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1564, SUB 1 (01/11/2002)

Bottomly; Barbara A. – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1606, SUB 1 (03/19/2002)

Fuller; Matthew D. – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1558, SUB 1 (06/10/2002)

Hamilton; Williard M. – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1575, SUB 1 (09/10/2002)

Highland Payphone Company – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1131, SUB 2 (05/09/2002)

Intercontinental Communications Group, Inc. – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1469, SUB 1 (06/18/2002)

Keith's Equipment; Keith D. Smith, d/b/a – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-491, SUB 2 (09/10/2002)

Linktel Communications – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1589, SUB 1 (03/19/2002)

Phoenix Teleco, LLC – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1519, SUB 1 (03/19/2002)

Mullinax; Rick – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1498, SUB 1 (03/19/2002)

Smokey Mountain Systems, Inc. – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-311, SUB 5 (03/19/2002)

Transtar Communications – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1570, SUB 1 (05/09/2002)

Wells; Wiley – Order Affirming Previous Commission Order Canceling Certificate
SC-1000, SUB 8; SC-1309, SUB 2 (05/09/2002)

SPECIAL CERTIFICATE/PSP - Show Cause

Triangle Telephone Co. - Order Closing Docket
SC-172, SUB 4 (04/05/2002)

SPECIAL CERTIFICATE/PSP - Sale/Transfer

Phonetel Technologies, Inc. - Order Approving Merger
SC-485, SUB 6 (07/09/2002)

SMALL POWER PRODUCER

SMALL POWER PRODUCER - Certificate

United Supply of America - Order Canceling Certificates and Closing Dockets
SP-82, SUB 4; SP-82, SUB 5; SP-82, SUB 6; SP-82, SUB 7; SP-82, SUB 8; SP-82, SUB 9 (06/26/2002)

Westmoreland-LG & E Partners - Order Approving Amendments to Stipulation
SP-77, SUB 0; SP-100, SUB 2 (02/06/2002)

SMALL POWER PRODUCER - Electric Generation Certificate

Edenton NUG Project, Limited Partnership - Order Canceling Certificate and Closing Docket
SP-124, SUB 0 (06/26/2002)

SMALL POWER PRODUCER - Sale/Transfer

Green Power Energy Holdings, LLC - Order Approving Transfer
SP-138, SUB 0; SP-133, SUB 1 (08/07/2002)

H & H Properties - Order Canceling Amended Certificate, Reinstating Initial Certificate, and Closing Docket
SP-76, SUB 1 (07/30/2002)

Mayo Hydropower, LLC - Order Approving Certificate Transfer
SP-137, SUB 0 (01/31/2002)

Mayo Hydropower, LLC - Order Approving Certificate Transfer
SP-137, SUB 1 (01/31/2002)

Northbrook Carolina Hydro, L.L.C. - Order Approving Transfer of Certificate Effective with Transfer of Title
SP-122, SUB 1; SP-139, SUB 0 (07/24/2002)

SHARED TELEPHONE SERVICE

SHARED TELEPHONE SERVICE - Cancellation of Certificate

Landfall Business Center Executive Suites - Order Canceling STS Certificate
STS-35, SUB 1 (11/20/2002)

SARED TELEPHONE SERVICE – Certificates Issued

Company	Docket No.	Date
International Business Machines	STS-40, Sub 0	(03/27/2002)
International Business Machines	STS-40, Sub 1	(03/27/2002)
International Business Machines	STS-40, Sub 2	(03/27/2002)
International Business Machines	STS-40, Sub 3	(03/27/2002)

TRANSPORTATION

TRANSPORTATION - Common Carrier Certificate

Central Moving & Storage; Vincent M. Maria, d/b/a - Order Granting Common Carrier Authority
T-4185, SUB 0 (10/24/2002)

Every Move You Make, Inc. - Recommended Order Granting Application, In Part
T-4183, SUB 0 (11/20/2002)

Superior Moving Systems, Inc. - Order Granting Common Carrier Authority
T-4146, SUB 1 (03/18/2002)

The Move Makers, Inc. - Order Granting Common Carrier Authority
T-4179, SUB 0 (05/24/2002)

Todd's Easy Moves; Todd Bentley Cummings, d/b/a - Order Granting Common Carrier Authority
T-4180, SUB 0 (08/26/2002)

US-1 Van Lines of North Carolina, Inc. - Order Sustaining Exceptions and Granting Application
T-4163, SUB 0 (05/09/2002)

ORDERS AND DECISIONS LISTED

TRANSPORTATION - Cancellation of Certificate

Action Moving and Storage of North Carolina, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-100, SUB 55; T-4088, SUB 4 (09/16/2002)

Advance Moving and Storage, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-100, SUB 55; T-4101, SUB 4 (09/16/2002)

Betts Household Moving Service; Shirley Edward Betts, d/b/a - Order Rescinding Order Canceling Certificate
T-2316, SUB 2 (12/23/2002)

Jiffy Moving & Storage Company; W.M. Poole Enterprises, Inc., d/b/a - Order Affirming Previous Commission Order Canceling Operating Authority
T-100, SUB 55; T-1975, SUB 8 (09/16/2002)

Miller's Moving Pick-Up & Delivery; Bobby E. Miller, d/b/a - Order Canceling Certificate
T-4145, SUB 2 (07/18/2002)

Morehead Moving & Storage, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-100, SUB 55; T-918, SUB 7 (09/16/2002)

Prestige Professional Moving & Storage; JAI MA Services, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-100, SUB 55; T-4100, SUB 4 (12/02/2002)

Tar Heel Reliable Movers, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-100, SUB 55; T-4148, SUB 2 (09/16/2002)

Triple A Moving & Storage, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
T-100, SUB 55; T-3438, SUB 4 (09/16/2002); Order Vacating Orders and Reinstating Operating Authority (12/20/2002)

TRANSPORTATION – Name Change

All American Relocation, Inc. - Order Approving Name Change
T-4121, SUB 1 (06/07/2002)

ORDERS AND DECISIONS LISTED

TRANSPORTATION - Reinstating Certificate

First Movers; Forsyth Initiative for Residential Self Treatment, Inc., d/b/a - Order Affirming Previous Commission Order Canceling Operating Authority
T-100, SUB 55; T-4102, SUB 3 (09/16/2002); Order Vacating Previous Commission Orders and Reinstating Certificate (10/28/2002)

Moving Store, Inc.; The - Order Vacating Order of September 7, 2001, and October 23, 2001, and Reinstating Operating Authority
T-100, SUB 53; T-919, SUB 12 (03/27/2002)

Tar Heel Reliable Movers, Inc. - Order Vacating Orders of September 7, 2001, and October 23, 2001 and Reinstating Operating Authority
T-100, SUB 53; T-4148, SUB 1 (05/21/2002)

Tar Heel Reliable Movers, Inc. - Order Granting Authorized Suspension
T-4148, SUB 1 (05/22/2002)

TRANSPORTATION- Show Cause

Atlantic Pacific Van & Storage, Inc - Recommended Order Canceling Operating Authority
T-1798, SUB 2 (05/17/2002)

Campbell's Transfer & Storage; Tommy Campbell, d/b/a - Order Rescinding Order Canceling Authority
T-2471, SUB 6 (04/19/2002)

Jack Bartlett Moving Company; Jack Bartlett Moving Co., Inc., d/b/a - Recommended Order Canceling Operating Authority
T-1863, SUB 10 (12/23/2002)

Professional Movers, Inc. - Recommended Order Canceling Operating Authority
T-4071, SUB 1 (04/01/2002)

Yarbrough Transfer Company - Recommended Order Canceling Operating Authority
T-734, SUB 6 (10/30/2002); Order Vacating Recommended Order (11/01/2002)

TRANSPORTATION - Suspension

Abernethy Transfer & Storage Co., Inc. - Order Granting Authorized Suspension
T-744, SUB 5 (08/23/2002)

Joe's Moving & Hauling; Joseph H. Smith, d/b/a - Order Granting Authorized Suspension
T-2789, SUB 2 (09/11/2002)

TRANSPORTATION - Sale

Coastal Carriers, Inc. - Recommended Order Denying Sale and Transfer Application
T-4174, SUB 0 (05/13/2002)

Coastal Carriers Moving & Storage Co., d/b/a Coastal Carriers, Inc. - Order Approving Lease of Authority
T-4174, SUB 1 (07/29/2002)

WATER/SEWER

WATER/SEWER - Abandonment

Intech Utilities, Inc. - Order Closing Docket
W-957, SUB 1 (03/25/2002)

WATER/SEWER - Bonding

Bear Den Acres Development, Inc. - Order Approving Corporate Surety Bond and Releasing Previous Bond and Surety
W-1040, SUB 4 (09/16/2002)

Brook Arbor; Brook Arbor Company, LLC, d/b/a - Order Approving Bond and Surety and Releasing Bond and Surety
W-1134, SUB 1 (10/07/2002)

Christmount Christian Assembly, Inc. - Order Approving Bond and Surety and Releasing Bond and Surety
W-1079, SUB 1 (08/26/2002)

Heater Utilities, Inc. - Order Approving Corporate Surety Bond and Releasing Bond
W-274, SUB 373 (02/19/2002)

Hydraulics, Ltd. - Order Accepting and Approving Bond
W-218, SUB 145 (03/27/2002)

Metro Water Systems, Inc. - Order Approving Bond and Surety and Releasing Bond and Surety
W-1109, SUB 4 (01/31/2002)

Residence Water Services, Inc. - Order Approving Bond and Surety and Releasing Bond and Surety
W-1122, SUB 1 (02/28/2002)

Triple H Development, Inc. - Order Approving Bond and Surety and Releasing Bond and Surety
W-1068, SUB 6 (05/29/2002)

WATER/SEWER - Certificate

ARCGE, LLC - Order Approving Bond, Granting Franchise, and Approving Rates
W-1178, SUB 0 (12/03/2002)

Asheville Property Management, Inc. - Order Granting Franchise and Approving Rates
W-1145, SUB 1 (02/28/2002)

Burke Caldwell Water Corporation - Order Granting Application for Deregulation
W-1177, SUB 0 (10/15/2002)

C & P Enterprises, Inc. - Order Granting Franchise and Approving Rates
W-1063, SUB 1 (08/22/2002)

Carolina Water Service, Inc. of North Carolina - Order Denying Reimbursement Fees and Closing Docket
W-354, SUB 146 (05/29/2002)

Carolina Water Service, Inc. of North Carolina - Order Granting Franchise and Approving Rates
W-354, SUB 255 (01/10/2002)

Community Investments, LLC - Order Approving Bond, Granting Franchise, and Approving Rates
W-1158, SUB 0 (04/09/2002)

Community Investments, LLC - Order Approving Bond, Granting Franchise, and Approving Rates
W-1158, SUB 1 (04/09/2002)

CWS Crossroads 2000, L. P. - Order Granting Franchise and Approving Rates
W-1163, SUB 0 (03/04/2002)

Evergreen Mobile Home Estate, Inc. - Recommended Order Granting Franchise and Approving Rates
W-1162, SUB 0 (02/08/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 372 (01/28/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 375 (02/08/2002); Errata Order (02/21/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 381 (03/28/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 382 (03/28/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 385 (04/05/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 388 (05/21/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 389 (04/30/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 394 (08/21/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 395 (08/22/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 396 (08/27/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 400 (10/02/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 401 (09/25/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 408 (11/01/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 409 (11/18/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 412 (12/04/2002)

Heater Utilities, Inc. - Order Granting Franchise and Approving Rates
W-274, SUB 413 (12/23/2002)

Hydraulics, Ltd. - Order Closing Docket
W-218, SUB 128 (08/29/2002)

Hydraulics, Ltd. - Order Granting Franchise and Approving Rates
W-218, SUB 153 (08/07/2002)

Hydraulics, Ltd. - Order Granting Franchise and Approving Rates
W-218, SUB 155 (08/07/2002)

Hydraulics, Ltd. - Order Granting Franchise and Approving Rates
W-218, SUB 156 (08/07/2002)

Hydraulics, Ltd. - Order Granting Franchise and Approving Rates
W-218, SUB 158 (08/07/2002)

Laurel Wood Utilities, Inc. - Order Approving Bond, Granting Franchise and Approving Rates
W-1155, SUB 0 (02/08/2002)

MECO Utilities Inc. - Order Approving Bond, Granting Franchise, and Approving Rates
W-1166, SUB 0 (10/15/2002)

Mountain Air Utilities Corporation - Order Closing Docket
W-1148, SUB 0 (04/17/2002)

Ocean Glen Owners Association; Ocean Glen Towne House Condominiums, d/b/a - Order Allowing Withdrawal of Application and Closing Docket
W-1107, SUB 0 (04/02/2002)

Pool Rock Plantation, Inc. - Order Dismissing Application and Closing Docket
W-1038, SUB 0 (06/04/2002)

Western Utilities Corporation - Order Closing Docket
W-229, SUB 5 (04/17/2002)

White Forest Wastewater Treatment; Harold E. Mullis, d/b/a - Recommended Order Granting Partial Rate Increase
W-1157, SUB 0 (08/26/2002)

Woodland Heights Mobile Home Park; Tommy D. Kelley, d/b/a - Order Approving Bond, Granting Franchise, and Approving Rates
W-1161, SUB 0 (04/10/2002)

WATER/SEWER - Complaint

Carolina Water Service, Inc. of North Carolina - Order Approving Consent Order and Closing Docket
W-354, SUB 231 (05/06/2002)

Carolina Water Service, Inc. of North Carolina - Order Addressing Contracts and Related Issues
W-354, SUB 236 (04/01/2002); Order Denying Motion for Reconsideration (12/19/2002)

Coastal Plains Utilities - Order Closing Dockets (Complaint of Eddie Flowe and Others)
W-215, SUB 14; W-215, SUB 17 (04/02/2002)

Coastal Plains Utilities - Order Closing Docket (Complaint of Reginald O. Lewis and Others)
W-215, SUB 19 (11/19/2002)

Emerald Plantation Utility Company - Order Closing Docket (Complaint of James L. Connell)
W-843, SUB 4 (12/13/2002)

Frit Environmental, Inc. - Order Closing Docket No. W-965, Sub 2 and Serving Answer to Complaint in Docket No. W-843, Sub 4
W-965, SUB 2; W-843, SUB 4 (11/19/2002)

Heater Utilities, Inc. - Order Closing Docket (Complaint of Mary Kay Niehoff and Other Residents)
W-274, SUB 333 (05/01/2002)

Heater Utilities, Inc. - Order Closing Docket (Complaint of Erika C. Dann)
W-274, SUB 343 (04/15/2002)

Hydraulics, Ltd. - Order Closing Docket (Complaint of Tina Crain)
W-218, SUB 147 (05/29/2002)

KDHWWTP, LLC - Order Closing Docket (Complaint of Ramada Inn Outer Banks Resort & Conference Center0
W-1160, SUB 1 (12/13/2002)

Triple H Development - Order Closing Docket (Complaint of Ms. Marilyn J. Troutman)
W-1068, SUB 5 (07/31/2002)

WATER/SEWER - Contracts/Agreements

Bald Head Island Utilities, Inc. - Order Authorizing Tariff Amendments
W-798, SUB 9 (01/14/2002)

Sugarloaf Utility, Inc. - Order Approving Contracts
W-1154, SUB 3 (09/25/2002)

ORDERS AND DECISIONS LISTED

WATER/SEWER - Discontinuance

Corriher Water Service, Inc. - Order Approving Discontinuance and Canceling Franchise
W-233, SUB 20 (10/23/2002)

M. L. Holbrook - Order Authorizing Discontinuance of Water Utility Service and Requiring Customer Notice
W-433, SUB 1 (08/06/2002)

Robertson Brothers Utilities - Order Canceling Franchise and Requiring Customer Notice
W-837, SUB 1 (01/23/2002)

Viewmont Acres Water System - Order Appointing Emergency Operator and Requiring Customer Notice
W-856, SUB 7 (12/12/2002)

WATER/SEWER - Emergency Operator

Coastal Plains Utility Company - Order Authorizing Control of Wells and Water Production Facilities by Carolina Plains Utility Company
W-215, SUB 21 (12/23/2002)

Mountain Ridge Estates Water System - Order Closing Docket and Transferring Reporting Requirements
W-975, SUB 3; W-975, SUB 4 (08/29/2002)

Mountain Ridge Estates Water System - Recommended Order Approving Customer Assessment
W-975, SUB 3 (08/29/2002)

Patterson; James E. - Order Appointing Emergency Operator and Requiring Customer Notice
W-276, SUB 4 (11/27/2002); Order Amending Tariff for Emergency Operator (12/11/2002)

Pied Piper Water System - Order Assessing Customers for Capital Improvements
W-893, SUB 1 (08/16/2002)

Poplar Trails Wastewater Treatment Plant - Order Dismissing Request and Closing Docket
W-1156, SUB 0 (09/13/2002)

Ross; Sanford E. - Order Granting Rate Increase, Assessing for Tank Replacement, and Requiring Customer Notice
W-618, SUB 6 (01/22/2002)

ORDERS AND DECISIONS LISTED

WATER/SEWER - Merger

Hydraulics, Ltd. - Order Granting Franchise
W-218, SUB 143; W-1150, SUB 0 (03/28/2002)

WATER/SEWER - Miscellaneous

Baton Water Corporation, Inc. - Order Granting Application for Deregulation
W-1192, SUB 0 (12/18/2002)

Blue Ridge Water Association, Inc. - Order Granting Application for Deregulation
W-1183, SUB 0 (10/23/2002)

Brentwood Water Corporation - Order Granting Application for Deregulation
W-1167, SUB 0 (06/04/2002)

Broadway Water Association, Inc. - Order Granting Application for Deregulation
W-1182, SUB 0 (09/30/2002)

Dan River Water, Inc. – Order Granting Application for Deregulation
W-1168, SUB 0 (09/16/2002)

Deep Run Water Corporation - Order Granting Application for Deregulation
W-1173, SUB 0 (08/27/2002)

Holden Beach Land Group, LLC - Order Allowing Withdrawal of Petition and Closing Docket
W-1164, SUB 0 (04/10/2002)

Mulberry-Fairplains Water Association, Inc. - Order Granting Application for Deregulation
W-189, SUB 1 (10/23/2002)

Northwest Onslow Water Association - Order Granting Application for Deregulation
W-1170, SUB 0 (10/15/2002)

Orange-Alamance Water System, Inc. - Order Granting Application for Deregulation
W-1175, SUB 0 (09/16/2002)

Rosemary Water Company - Order on Request for Declaratory Ruling
W-1188, SUB 0 (09/04/2002)

The Pfeiffer North Stanly Water Association, Inc. - Order Granting Application for Deregulation
W-1169, SUB 0 (09/30/2002)

ORDERS AND DECISIONS LISTED

WATER/SEWER - Name Change

Ridgecrest Water Utility - Order Approving Name Change
W-71, SUB 8 (08/28/2002)

WATER/SEWER - Rate Increase

A & D Water Service, Inc. - Order Approving Bond, Approving Transfer, Approving Rates, and Requiring Customer Notice
W-1049, SUB 5; W-820, SUB 13 (11/25/2002)

Baytree Waterfront Properties, Inc. - Recommended Order Granting Partial Rate Increase
W-938, SUB 3 (03/15/2002)

Community Water Works, Inc. - Order Closing Docket
W-316, SUB 3 (04/18/2002)

Conleys Creek Limited Parnership - Order Granting Rate Increase and Requiring Customer Notice
W-1120, SUB 1 (08/16/2002)

Coral Park Community Well - Recommended Order Approving Rate Increase and Testing Expense Surcharge
W-717, SUB 2 (05/14/2002)

Corolla North Utilities, Inc. - Order Closing Dockets
W-953, SUB 3; W-953, SUB 4; W-953, SUB 5 (04/05/2002)

Corriher Water Service - Recommended Order Granting Partial Increase in Rates
W-233, SUB 17 (02/14/2002); Order Closing Docket (08/29/2002)

Goss Utilities - Order Closing Docket
W-457, SUB 15; W-218, SUB 152 (05/22/2002)

Heater Utilities, Inc. - Order Amending Tariff
W-274, SUB 282 (06/05/2002); Order Closing Docket (08/15/2002)

Holiday Island Property Owners Assoc. - Order Closing Docket
W-386, SUB 12 (04/17/2002)

Honeycutt; Wayne M. - Order Canceling Hearing, Granting Partial Rate Increase, Requiring Bond, and Requiring Customer Notice
W-472, SUB 12 (06/25/2002)

ORDERS AND DECISIONS LISTED

Laurel Hill Water Company - Order Granting Partial Rate Increase and Requiring Customer Notice
W-67, SUB 12 (01/11/2002)

River Hills, Inc. - Recommended Order Approving Partial Rate Increase
W-461, SUB 3 (08/22/2002); Order Allowing Recommended Order to Become Final (08/29/2002)

Riverbend Water Systems, Inc. - Recommended Order Granting Partial Increase in Rates and Charges and Requiring Customer Notice
W-390, SUB 10 (09/12/2002)

Riverview North Utilities, Inc. - Order Closing Docket
W-758, SUB 1 (07/03/2002)

Sandler Utilities at Mill Run L.L.C. - Order Granting Rate Increase and Requiring Customer Notice
W-1130, SUB 2 (08/27/2002)

Setzer Brothers Well Boring, Inc. - Order Closing Docket
W-360, SUB 4 (05/10/2002)

Silver Maples Mobile Estates - Order Dismissing Application and Closing Docket
W-776, SUB 3 (05/24/2002)

South Rowan Investment Corporation - Order Closing Docket
W-807, SUB 1 (04/05/2002)

Total Environmental Solutions, Inc. - Recommended Order Granting Partial Rate Increase
W-1146, SUB 1 (03/13/2002); Order Allowing Recommended Order to Become Effective and Final (03/26/2002)

Tobacco Branch Village, Inc.; Tobacco Branch Village Water System, d/b/a - Order Closing Docket
W-504, SUB 4 (08/30/2002)

Water Resources, Inc. - Recommended Order Granting Partial Rate Increase, Requiring Improvements, and Requiring Customer Notice
W-1034, SUB 4 (12/03/2002)

Whispering Pines Village; John D. Hook, d/b/a - Order Approving Stipulation and Rate Increase
W-1042, SUB 2 (10/16/2002)

Willow Creek Builders, Inc. - Recommended Order Granting Partial Rate Increase
W-387, SUB 2 (08/21/2002); Order Allowing Recommended Order to Become Effective and Final (08/27/2002)

ORDERS AND DECISIONS LISTED

WATER/SEWER - Tariff

CWS Systems, Inc. - Order Terminating Fire Hydrant Surcharge
W-778, SUB 24 (08/06/2002)

Sugarloaf Utility, Inc. - Order Approving Contract, Tariff Revision, and Revised Service Area
W-1154, SUB 2; W-1154, SUB 1 (04/08/2002)

WATER/SEWER - Sale/Transfer

A & D Water Service, Inc. - Order Canceling Franchise and Closing Docket
W-1049, SUB 4 (02/21/2002)

Alpha Utilities, Inc. - Order Closing Docket
W-862, SUB 25 (03/27/2002)

Asheville Property Management, Inc. - Recommended Order Approving Transfer and New Rates
W-1145, SUB 0 (02/25/2002)

Bradfield Farms Water Company - Order Closing Docket
W-1044, SUB 4 (03/27/2002)

Carolina Blythe Utility Co. - Order Allowing Withdrawal of Application and Closing Docket
W-503, SUB 16 (09/23/2002)

Coastal Plains - Order Approving Transfer and Requiring Customer Notice
W-215, SUB 22 (08/13/2002)

COGDILL; GREG S. - Order Approving Transfer and Rates
W-1171, SUB 0; W-1108, SUB 4 (08/27/2002)

Glynnwood Water Systems, Inc. - Order Closing Docket
W-1032, SUB 3 (04/01/2002)

Heater Utilities, Inc. - Order Approving Stipulation, Granting Transfer, Approving Rates, and Recognizing Contiguous Extension
W-274, SUB 376; W-603, SUB 4 (12/03/2002)

Heater Utilities, Inc. - Order Approving Transfer, Canceling Franchises, and Requiring Customer Notice
W-274, SUB 379 (03/04/2002)

Hydraulics, Ltd. - Order Rescinding Filing Requirement and Closing Docket
W-218, SUB 96 (08/29/2002)

Hydraulics, Ltd. - Recommended Order Approving Stipulation, Merger, and Rates
W-218, SUB 150 (04/15/2002); Order Allowing Recommended Order to Become Effective and Final (04/15/2002)

Hydraulics, Ltd. - Recommended Order Approving Stipulation, Transfer, and Rates
W-218, SUB 152 (04/29/2002); Order Allowing Recommended Order to Become Effective and Final (04/29/2002); Order Granting Rate Increase and Requiring Customer Notice (12/03/2002)

Intracoastal Utilities, Inc. - Order Closing Docket
W-986, SUB 2 (07/05/2002)

Marquis at Preston Apartments - Order Approving Bond, Approving Transfer, and Approving Rates
W-1172, SUB 0; W-1067, SUB 1 (11/05/2002)

Utilities, Inc. - Order Approving Acquisition of Stock and Requiring Customer Notice
W-1000, SUB 9 (02/07/2002); Order Granting Motion to Dismiss Appeal and Closing Docket (08/02/2002)

WATER/SEWER - Tariff Revision for Pass-Through

Community Investments, LLC - Order Approving Tariff Revision and Requiring Customer Notice
W-1158, SUB 2 (09/20/2002)

Fox Run Water Company, Inc. - Order Closing Docket
W-959, SUB 3 (04/08/2002)

Goss Utilities Company - Order Closing Docket
W-457, SUB 13 (04/05/2002)

Graves Evans Enterprises, Inc; Sprint Valley County Estates, d/b/a - Order Approving Tariff Revision and Requiring Customer Notice
W-1144, SUB 1 (03/06/2002)

Homestead Community Water - Order Approving Tariff Revision and Requiring Customer Notice
W-452, SUB 6 (08/21/2002)

Laurel Wood Utilities, Inc. - Order Approving Tariff Revision
W-1155, SUB 1 (10/23/2002)

Maxwell Water Company - Order Approving Tariff Revision and Requiring Customer Notice
W-339, SUB 4 (09/30/2002)

McMahan; Harold - Order Approving Tariff Revision and Requiring Customer Notice
W-791, SUB 4 (08/27/2002)

Metro Water Systems, Inc. - Order Approving Tariff Revision
W-1109, SUB 3 (01/31/2002)

Overhills Water Company, Inc. - Order Closing Docket
W-175, SUB 10 (04/08/2002)

Watercrest Estates - Order Approving Tariff Revision and Requiring Customer Notice
W-1021, SUB 4 (08/15/2002)

Wellington Mobile Home Park - Order Approving Tariff Revision
W-1011, SUB 8 (10/23/2002)

West Wilson Water Corporation - Order Approving Tariff Revision and Requiring Customer Notice
W-781, SUB 34 (08/16/2002)

WATER/SEWER - Contiguous Water Extension

Carolina Blythe Utility Co. - Order Granting Franchise and Approving Rates
W-503, SUB 12 (07/09/2002)

Carolina Blythe Utility Co. - Order Recognizing Contiguous Extensions and Approving Rates
W-503, SUB 14 (08/27/2002)

Carolina Water Service, Inc. of North Carolina - Order Granting Franchises and Approving Rates and Contracts
W-354, SUB 160 (10/15/2002)

Carolina Water Service, Inc. of North Carolina - Order Approving Refund Plan
W-354, SUB 171 (04/19/2002); Order Recognizing Contiguous Extension and Approving Rates (05/17/2002)

Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension and Approving Rates
W-354, SUB 221 (10/08/2002)

Conleys Creek Limited Partnership - Order Recognizing Contiguous Extension and Approving Rates
W-1120, SUB 2 (12/16/2002)

CWS Systems, Inc. - Order Waiving Notice Requirement and Closing Docket
W-778, SUB 47 (03/08/2002)

ORDERS AND DECISIONS LISTED

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 374 (08/22/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 377 (10/09/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 378 (03/04/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 380 (03/26/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 383 (04/11/2002); Errata Order (10/30/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 384 (05/31/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 386 (07/18/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 387 (05/03/2002); Errata Order (05/07/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 390 (07/31/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 393 (08/08/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 398 (09/12/2002); Errata Order (11/22/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 402 (11/01/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 404 (11/01/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 405 (11/18/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 406 (11/18/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 407 (11/18/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 410 (12/02/2002)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-274, SUB 411 (12/06/2002)

Hydraulics, Ltd. - Order Recognizing Contiguous Extension and Approving Rates
W-218, SUB 154 (08/07/2002)

Ira D. Lee and Associates, Inc. - Order Approving Bond, Granting Franchise, and Approving Rates
W-876, SUB 5 (04/12/2002)

Outer Banks/Kinnakeet Associates, LLC - Order Recognizing Contiguous Extension and Approving Rates
W-1125, SUB 1 (08/22/2002)

Pine Island Utilities - Order Recognizing Contiguous Extension and Approving Rates
W-999, SUB 2 (08/23/2002)

Pine Island-Currituck LLC - Order Recognizing Contiguous Extension and Approving Rates
W-1072, SUB 5 (04/10/2002); Errata Order (05/22/2002)

Water Quality Services, Inc. - Order Granting Motion and Closing Docket
W-1099, SUB 5 (01/09/2002)

Water Quality Services, Inc. - Order Recognizing Contiguous Extension and Approving Rates
W-1099, SUB 6 (07/03/2002)

WATER/SEWER - Water Restriction

Heater Utilities, Inc. - Order Restricting Water Use and Requiring Customer Notice
W-274, SUB 397 (08/16/2002)

Ira D. Lee and Associates, Inc. - Order Restricting Water Use and Requiring Customer Notice
W-876, SUB 6 (08/23/2002)

ORDERS AND DECISIONS LISTED

RESALE OF WATER/SEWER

RESALE OF WATER/SEWER - Certificate

AIMCO/Shadow Lake, LP - Order Granting Temporary Operating Authority and Approval of Rates
WR-147, SUB 0 (12/13/2002)

Alexander Development, LLC - Order Granting Temporary Operating Authority and Approval of Rates
WR-136, SUB 0 (04/22/2002)

Atlantis Partners, LLC - Order Granting Temporary Operating Authority and Approval of Rates
WR-137, SUB 0 (05/06/2002)

Barrington Place Associates, LLC - Order Granting Temporary Operating Authority and Approval of Rates
WR-167, SUB 0 (12/13/2002)

BNP Realty, LLC - Order Granting Certificate of Authority and Approval of Rates
WR-59, SUB 7 (01/28/2002)

BNP/Chrysson Phase I, LLC - Order Granting Certificate of Authority and Approval of Rates
WR-62, SUB 3 (01/28/2002)

Bridgewood Title Partnership - Order Granting Certificate of Authority and Approval of Rates
WR-132, SUB 0 (01/28/2002)

Carroll Investment Properties, Inc. - Order Granting Temporary Operating Authority and Approval of Rates
WR-45, SUB 2 (04/22/2002)

Carriage House Apartments Limited Partnership - Order Granting Temporary Operating Authority and Approval of Rates
WR-144, SUB 0 (09/30/2002)

CRIT-NC, LLC - Order Granting Temporary Operating Authority and Approval of Rates
WR-39, SUB 20 (05/07/2002)

Epoch-Florida Capital Raleigh Investment Partners, Ltd. - Order Granting Temporary Operating Authority and Approval of Rates
WR-156, SUB 0 (09/23/2002)

Fairfield Dillard Road LP - Order Granting Certificate of Authority and Approval of Rates
WR-130, SUB 0 (01/14/2002)

ORDERS AND DECISIONS LISTED

Foxrun Ridge Limited Partnership - Order Granting Temporary Operating Authority and Approval of Rates
WR-146, SUB 0 (09/30/2002)

Joslin Realty, Inc. - Order Granting Temporary Operating Authority and Approval of Rates
WR-151, SUB 0 (09/30/2002)

MV/ALG River Crossing Limited - Order Granting Temporary Operating Authority and Approval of Rates
WR-164, SUB 0 (12/03/2002)

National Pinetree, LP - Order Granting Temporary Operating Authority and Approval of Rates
WR-153, SUB 0 (09/30/2002)

Northwestern Mutual Life Insurance Company - Order Granting Certificate of Authority and Approval of Rates
WR-129, SUB 0 (01/14/2002)

NPCA Limited Partnership - Order Granting Temporary Operating Authority and Approval ofRates
WR-140, SUB 0 (10/16/2002)

Orange Grove Park Limited Partnership - Order Granting Temporary Operating Authority and Approval of Rates
WR-170, SUB 0 (12/13/2002)

Parkside Village Associates - Order Granting Temporary Operating Authority and Approving Rates
WR-150, SUB 0 (09/30/2002)

R & B Realty Group - Order Granting Temporary Operating Authority and Approval of Rates
WR-133, SUB 0 (05/06/2002)

Regent Ravinia, LLC - Order Granting Temporary Operating Authority and Approval of Rates
WR-139, SUB 0 (09/30/2002)

Stillwater Apartments, LLC - Order Granting Temporary Operating Authority and Approval ofRates
WR-119, SUB 0 (04/22/2002)

Summermill Apartments Limited Partnership - Order Granting Temporary Operating Authority and Approval of Rates
WR-141, SUB 0 (12/03/2002)

TCR Place Limited Partnership - Order Granting Certificate of Authority and Approval of Rates
WR-131, SUB 0 (01/14/2002)

Walnut Ridge Partners, LP - Order Granting Temporary Operating Authority and Approval of Rates
WR-152, SUB 0 (12/02/2002)

Windridge Oxford Associates - Order Granting Temporary Operating Authority and Approval of Rates
WR-149, SUB 0 (09/30/2002)

RESALE OF WATER/SEWER - Sale/Transfer

Benj. E. Sherman & Sons, Inc., Managing Agent for BES Millbrook Fund I&II - Order Granting Temporary Operating Authority, Approving Rates, and Requiring Customer Notice
WR-161, SUB 0; WR-35, SUB 17 (12/13/2002)

Crosland Arbors, LLC - Order Granting Transfer of Temporary Operating Authority and Approval of Rates
WR-135, SUB 0; WR-6, SUB 27 (05/10/2002)

Crosland Radbourne, LLC - Order Granting Transfer of Temporary Operating Authority and Approval of Rates
WR-134, SUB 0; WR-6, SUB 26 (05/10/2002)

Equity Residential Properties - Order Granting Transfer of Temporary Operating Authority and Approval of Rates
WR-18, SUB 34; WR-33, SUB 1 (05/30/2002)

Eaststone, LLC - Order Granting Temporary Authority and Approval of Rates
WR-160, SUB 0; WR-15, SUB 9 (10/14/2002)

New Brookstone, LLC - Order Granting Transfer of Temporary Operating Authority and Approval of Rates
WR-138, SUB 0; WR-98, SUB 2 (05/10/2002)

Northwestern Mutual Life Insurance Company - Order Granting Temporary Operating Authority and Approval of Rates
WR-129, SUB 1; WR-92, SUB 1 (09/30/2002); Errata Order (10/04/2002)

RESALE OF WATER/SEWER - Tariff Revision for Pass-Through

Abbott's Creek Apartment Homes; DLS Kernersville, LLC, d/b/a - Order Approving Tariff Revision
WR-19, SUB 1 (11/01/2002)

Autumn Woods Associates, LLC - Order Approving Tariff Revision
WR-28, SUB 1 (07/31/2002)

ORDERS AND DECISIONS LISTED

Acquiport Woodway, Inc. - Order Approving Tariff Revision
WR-60, SUB 1 (04/22/2002)

BNP Realty, LLC - Order Approving Tariff Revision
WR-59, SUB 8 (05/10/2002)

BNP/Chrysson Phase I, LLC - Order Approving Tariff Revision
WR-62, SUB 4 (05/10/2002)

BNP/Chrysson Phase I, LLC - Order Approving Tariff Revision
WR-62, SUB 5 (05/09/2002)

Camden Operating LP - Order Approving Tariff Revisions
WR-42, SUB 8 (08/27/2002); Order Approving Tariff Revisions (08/27/2002); Order Approving (08/27/2002)

DRP Stoneycreek, LLC - Order Approving Tariff Revision
WR-32, SUB 3 (11/01/2002)

Equity Residential Properties Operating Limited Partnership - Order Approving Tariff Revision
WR-18, SUB 31 (04/22/2002)

Equity Residential Properties Operating Limited Partnership - Order Approving Tariff Revision
WR-18, SUB 32 (05/14/2002); Errata Order (05/15/2002)

Equity Residential Properties Operating Limited Partnership - Order Approving Tariff Revision
WR-18, SUB 33 (05/31/2002)

Epoch-Florida Capital Raleigh Investment Partners, Ltd. - Order Approving Tariff Revision
WR-156, SUB 1 (12/18/2002)

G&I II University LLC - Order Approving Tariff Revision
WR-57, SUB 3 (11/27/2002); Errata Order (12/16/2002)

Knickerbocker Properties, Inc. XX - Order Approving Tariff Revision
WR-109, SUB 2 (05/08/2002)

Lodge at Springs Farm, Ltd. - Order Approving Tariff Revision
WR-55, SUB 1 (05/09/2002)

Lodge at Old Concord, LLC - Order Approving Tariff Revision
WR-87, SUB 1 (05/09/2002)

Lodge at Southpoint, LP - Order Approving Tariff Revision
WR-88, SUB 1 (04/22/2002)

ORDERS AND DECISIONS LISTED

Mid-America Capital Partners, LP - Order Approving Tariff Revision
WR-22, SUB 3 (05/09/2002)

Mid-America Capital Partners, LP - Order Approving Tariff Revision
WR-22, SUB 4 (05/09/2002)

Mid-America Capital Partners, LP - Order Granting Tariff Revision
WR-22, SUB 5 (12/03/2002)

Mallard Creek Apartment Properties, LLC - Order Approving Tariff Revision
WR-58, SUB 2 (11/05/2002)

Petit Five, LLC - Order Approving Tariff Revision
WR-127, SUB 1 (05/08/2002)

SG Brassfield Park-Greensboro, L.L.C. - Order Approving Tariff Revision
WR-105, SUB 1 (05/08/2002)

Sterling Apartments, LLC - Order Approving Tariff Revision
WR-90, SUB 4 (08/21/2002)

White/Crosland Associates, LLC - Order Approving Tariff Revision
WR-36, SUB 4 (10/23/2002)

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