

in BellSouth's brief, the \$1,000 per day payment for each day past the due date is a finite amount, simple to determine, and easy to administer.

BellSouth shall remit to this Commission \$1,000 per day, for deposit in the State's General Revenue Fund, for each day that payment is late under the Tier 2 enforcement mechanism.

XXII. RESOLUTION OF TIER 1 PENALTY DISPUTES

Herein, we address how to treat disputes that emerge from the penalties paid by BellSouth under the Tier 1 enforcement mechanism.

Arguments

As stated in BellSouth's witness Coon's testimony, BellSouth generally agrees with the proposal attached to the testimony of witness Stallcup, whereby the ALECs may seek additional remedies from BellSouth if the amounts paid under the Tier 1 enforcement mechanism are in question. However, BellSouth proposes that the dispute process add a provision to discourage the submission of frivolous disputes. Frivolous disputes, as defined by witness Coon, are those disputes, "where the amount in dispute is negligible or where it is consistently determined that the penalty is correct."

As stated in its prehearing statement, the ALEC Coalition also agrees with the proposal attached to the testimony of witness Stallcup, whereby the ALECs may seek additional remedies from BellSouth if the amounts paid under the Tier 1 enforcement mechanism are in question. However, since the proposal includes a provision for the ALECs to bear the responsibility for all administrative costs associated with resolution of disputes that result in no actual payment, the ALEC Coalition requests that we further define "administrative costs." In addition, the ALECs cite the provision for this Commission to settle disputes if BellSouth and the ALEC are unable to reach a mutually agreeable settlement pertaining to the amount disputed.

DECISION

Based upon the positions presented by both BellSouth and the ALEC Coalition, there is little to debate regarding this issue. Both parties agree to the dispute process outlined in witness Stallcup's proposal, with the exception of the parties' request for additional provisions and clarifications to be included in the proposal.

BellSouth requests an additional provision to discourage the submission of frivolous disputes. We note that the current proposal's provision for ALECs to bear the responsibility for "all administrative costs associated with resolution of disputes that result in no actual payment" fulfills BellSouth's request for a provision to discourage the ALECs from submitting frivolous disputes. As requested by the ALEC Coalition, we define administrative costs as all expenses that are incidental in nature and reasonably incurred in the resolution of the disputed matter. Such costs would include, but not necessarily be limited to: postage, travel and lodging, communication expenses, and legal costs. The ALEC Coalition agrees with witness Stallcup's provision for this Commission to settle disputes if the parties are unable to mutually agree on the disputed settlement amount. We concur with this position.

If an ALEC disputes the amount paid under Tier 1 enforcement mechanisms, the ALEC shall submit a written claim to BellSouth within 60 days after the payment due date. BellSouth shall investigate all claims and provide the ALEC written findings within 30 days after receipt of the claim. If BellSouth determines the ALEC is owed additional amounts, BellSouth shall pay the ALEC such additional amounts within 30 days after its findings along with six percent simple interest per annum. However, the ALEC shall be responsible for all administrative costs associated with resolution of disputes that result in no actual payment. Administrative costs are those reasonable costs incurred in the resolution of the disputed matter. Such costs would include, but not be limited to, postage, travel and lodging, communication expenses, and legal costs. If BellSouth and the ALEC have exhausted good faith negotiations and are still unable to reach a mutually agreeable settlement pertaining to the amount disputed, will we settle the dispute. If our intervention is required, a mediated resolution will be pursued.

XXIII. VERIFICATION OF TIER 1 AND TIER 2 PENALTY PAYMENTS

In this Section we define the accounting process by which the penalties paid by BellSouth under Tier 1 and Tier 2 Enforcement Mechanisms will be recorded.

Arguments

BellSouth agrees with the proposal attached to the testimony of witness Stallcup, whereby at the end of each calendar year, BellSouth will have its independent accounting firm certify that all penalties under Tier 1 and Tier 2 enforcement mechanisms were paid and accounted for in accordance with Generally Accepted Accounting Principles.

In its brief, BellSouth argues that conducting audits on a random basis, as proposed by the ALECs, versus a scheduled annual audit could result in multiple audits annually or audits "done in a manner that would otherwise create an administrative burden."

The ALEC Coalition agrees that an independent accounting firm should certify that all penalties under Tier 1 and Tier 2 enforcement mechanisms were paid and accounted for in accordance with Generally Accepted Accounting Principles. However, the ALEC Coalition believes the independent accounting firm should be selected by this Commission and further proposes that the audits be conducted randomly rather than on an annual basis. In its brief, the ALEC Coalition argues that having to wait 12 months for validation of BellSouth's remedy payments could have "devastating consequences" for some ALECs.

DECISION

We concur with BellSouth's position regarding audits being conducted on an annual basis to ensure that all the penalties under Tier 1 and Tier 2 enforcement mechanisms are properly and accurately assessed. We find no substantial evidence in the ALECs' testimony to support the need for random audits. However, we concur in part with the ALECs position that an independent accounting firm should be selected by BellSouth and confirmed by this Commission. Furthermore, we contend that these audits shall be performed subsequent to the annual audits of BellSouth's

performance measures to ensure that payments made under the Tier 1 and Tier 2 enforcement mechanisms are based on valid data.

At the end of each calendar year, an independent accounting firm, mutually agreeable to this Commission and BellSouth, shall certify that all penalties under Tier 1 and Tier 2 enforcement mechanisms were paid and accounted for in accordance with Generally Accepted Accounting Principles. Furthermore, these audits shall be performed based upon valid audited data of BellSouth's performance measures.

#### XXIV. LIMITATIONS OF LIABILITY

Here, we consider whether there are certain instances in which BellSouth should not be held liable for performance measure failures, specifically in situations that are beyond BellSouth's control, for example, ALEC acts or omissions.

#### Arguments

Witness Coon agrees with the liability limitations prescribed by staff witness Stallcup in Exhibit 13. Witness Stallcup's proposal states that BellSouth will not be responsible for performance measure failures that result from: ALEC accumulation and submission of orders at unreasonable quantities or times or failure to submit accurate orders, ALEC acts or omissions in bad faith, ALEC acts or omissions contrary to its Interconnection Agreement, the Act, Commission rule, or state law. Witness Stallcup's proposal also would limit BellSouth liability stemming from Force Majeure events and acts or omissions associated with third-party systems or equipment.

While ALEC witness Bursh endorses a procedural liability cap, her testimony does not specifically address the above conditions that would trigger liability limitations.

#### DECISION

We agree with the liability limitations proposed by witness Stallcup in Exhibit 13. Otherwise, ALECs could benefit from their own failure to perform or from "gaming" the enforcement plan by intentionally seeking to cause BellSouth to fail to meet measurement standards or benchmarks. We also agree that

BellSouth should not be liable for the effects of a Force Majeure event or the results of acts or omissions related to third-parties' systems or equipment.

The following limitations of BellSouth liability shall apply:

1) BellSouth will not be responsible for an ALEC's acts or omissions that cause performance measures to be missed or failed, including, but not limited to, accumulation and submission of orders at unreasonable quantities or times or failure to submit accurate orders or inquiries. BellSouth shall provide the ALEC with reasonable notice of such acts or omissions or provide the ALEC with any such supporting documentation.

2) BellSouth shall not be obligated for penalties under Tier 1 or Tier 2 Enforcement Mechanisms for noncompliance with a performance measure if such noncompliance was the result of an act or omission by the ALEC that was in bad faith.

3) BellSouth shall not be obligated for penalties under Tier 1 or Tier 2 Enforcement Mechanisms for noncompliance with a performance measurement if such noncompliance was the result of any of the following: a Force Majeure event; an act or omission by a ALEC that is contrary to any of its obligations under the Act, Commission rule, or state law; or an act or omission associated with third-party systems or equipment.

In addition to these specific limits of liability, BellSouth may petition this Commission to consider a waiver based upon other circumstances.

#### XXV. CAP ON REMEDY PAYMENTS

In this Section, we explore the type of overall limit on remedy payments by BellSouth under a Performance Assessment Plan. Such a limit, or cap, would limit the risks of financial harm to BellSouth and to its shareholders.

#### Arguments

All parties agree that a cap is appropriate, but they debate the merits of an absolute cap versus a procedural cap. ALECs

state that an absolute cap fails to provide a continuing incentive for BellSouth to perform once the cap is reached. BellSouth considers the more open-ended procedural cap unfair to the ILEC.

Witness Coon argues that only an absolute cap is appropriate with a "self-effectuating" performance assessment plan and that a 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." In his view, the procedural cap process simply defers and delays the decision of the total of payments at risk.

Witness Coon notes the possibility that payments beyond the procedural cap could eventually be determined by this Commission to have been unwarranted, but that BellSouth may suffer financial harm if not successful in recovering these "overpayments" from ALECs. He recommends that, if this Commission chooses the procedural cap approach, the procedural cap threshold should be set very low and that payments should be suspended until the absolute cap is eventually set by this Commission. Witness Coon points out that the performance plans in New York, Texas, Kansas and Oklahoma all have annual caps similar to the BellSouth-proposed absolute cap.

ALEC witness Bursh argues that an absolute cap is unacceptable because of the possibility that BellSouth could choose to retain market share by delivering noncompliant service to ALECs. She further states that an absolute cap implies that once the ILEC's performance deteriorates to a particular level (i.e. reaching the cap), then further deterioration in performance is irrelevant since the penalty cap will have been met.

Witness Bursh takes issue with BellSouth's contention that payments made beyond a procedural cap may be difficult for BellSouth to recover. She states that if 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." She appears to believe that Tier 1 payments beyond the procedural caps should still be paid directly to ALECs rather than into an escrow account.

Witness Ford concurs with witness Bursh that an absolute cap is inappropriate because, once the cap is reached, there is no counter-incentive to BellSouth's potential desire to discriminate and impede competition.

DECISION

As noted above, the record in this case shows that BellSouth agrees in principle to the inclusion of performance measures and to a concomitant self-executing remedy plan in its interconnection agreements. However, we find it unfair and unrealistic to expect BellSouth to agree to an unlimited penalty total under such a remedy plan. We find that an absolute annual cap is necessary to provide some degree of certainty regarding the potential total of remedy payments by BellSouth.

We disagree with the ALECs' and Z-Tel's view that performance penalties alone are expected to motivate a Bell company to provide nondiscriminatory OSS access and service for ALECs. We note that in its New York order, the FCC stated:

Most fundamentally, we disagree with a basic assumption made by several commenters: that liability under the Plan must be sufficient, *standing alone*, to completely counterbalance Bell Atlantic's incentive to discriminate. The performance plans adopted by the New York Commission do not represent the only means of ensuring Bell Atlantic continues to provide nondiscriminatory service to competing carriers. In addition to the \$269 million at stake under this 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 271(d)(6); liquidated action under 32 interconnection agreements; and remedies associated with antitrust and other legal actions. (FCC 99-404, ¶435)

Further, we note that if performance measures results were to indicate that BellSouth's service to ALECs had deteriorated severely, we could require a show cause proceeding to investigate the causes and potential remedies. ALECs would be free to file a complaint with this Commission, as well, in this case.

The Performance Assessment Plan shall include an absolute annual cap, limiting total annual payments under Tier 1 and Tier 2 as specified above.

XXVI. DOLLAR VALUE OF CAP

Herein, we consider how to specify a total remedy cap. All parties agree that the cap should be stated in terms of a percentage of BellSouth's Florida net operating revenues.

Arguments

As a percentage of net revenues, the parties' positions on caps range from BellSouth's 36 percent to the ALEC Coalition's 39 percent. Witness Stallcup's proposal suggests a 39 percent procedural cap.

BellSouth witness Coon states that the cap should be stated in terms of a percentage of BellSouth's Florida net operating revenues, rather than a discrete dollar amount. He recommends an absolute cap of 36 percent of net operating revenues, noting that this is consistent with caps approved by the FCC for Verizon in New York and SBC in Kansas and Oklahoma.

Witness Coon surmises that the 39 percent cap proposed in witness Stallcup's proposal may have been based upon the Bell Atlantic (now Verizon) cap in New York. This cap was originally set by the New York Commission at 36 percent. It was eventually increased by three percent through fines triggered by major OSS malfunctions that occurred after 271 approval was granted by the FCC. He states the additional three percent is not necessary because similar failures "will not occur in BellSouth."

Witness Coon notes that if this Commission should opt for a procedural cap, this threshold should be set very low. He states that, in this case, the cap should be set "well below what any reasonable absolute cap might be."

Regarding the amount of the cap, witness Bursh's testimony states that "the procedural cap needs to be set sufficiently high enough so as not to negate the benefits of self-executing

remedies." She further states the "39 percent procedural cap in the Strawman Proposal is reasonable."

DECISION

We agree with BellSouth that the cap should be set as a percentage of net revenues, rather than set at a discrete dollar amount. This approach, which was followed in New York, Texas and Georgia, prevents the need to periodically update a specified dollar-amount cap.

We note that BellSouth witness Coon states that the caps approved to date by the FCC have been based upon a designated year of ARMIS reporting. He stated that basing the cap upon the percentage of either 1999 or 2000 ARMIS net operating revenue would be appropriate, depending upon the availability of the latter.

We are uncertain whether witness Stallcup's cap of 39 percent was based upon the New York experience, as posited by witness Coon. However, we disagree with witness Coon that there can be any certainty that problems similar to those experienced in New York could not occur in Florida. We note that the caps were set at 44 percent in Georgia and 36 percent in Texas. See Docket No. 7892-U, Order In re: Performance Measurements For Telecommunications Interconnection, Unbundling And Resale, January 12, 2001, p. 24; Interconnection Agreement-Texas between Southwestern Bell Telephone Company and CLEC (T2A) 010700, p.7. Therefore, we find that the 39 percent cap proposed by witness Stallcup is reasonable.

The absolute annual cap for Tier 1 and Tier 2 payments shall be set at 39 percent of BellSouth's annual Florida net operating revenues, based upon the most recently reported ARMIS data.

XXVII. PENALTIES IN EXCESS OF CAP

This issue inquires into the procedure for possible remedy payments beyond the cap.

Arguments

Witness Bursh contends that "the procedural cap affords BellSouth the opportunity to present this Commission with evidence as to why it should not be required to continue paying remedies even though its performance continues to deteriorate." This appears to place the burden of proof upon BellSouth. Witness Stallcup concurs that BellSouth should bear the burden of proof in allowing for an "expedited hearing." BellSouth states flatly that no penalty payments in excess of the cap are appropriate and does not address any procedure for considering otherwise.

DECISION

We find that the absolute penalty cap represents a substantial motivation for BellSouth to provide service in compliance with the approved performance measures. We note that it is unlikely that the need to consider payments in excess of the cap would arise. BellSouth would be well served to take effective remedial action long before it is required to forfeit more than one-third of annual Florida net revenues.

As stated above, should performance measures results indicate that BellSouth's service to ALECs had deteriorated severely, we could require a show cause proceeding to investigate the causes and potential remedies. ALECs would also be free to file a complaint with this Commission, as well, in this case.

As also cited above, the FCC has stated that performance plan penalties are not intended to be the sole source of motivation for ILECs to provide nondiscriminatory OSS access and service. Therefore, we will not require penalty payments beyond the 39 percent annual cap. However, this will not limit our ability to raise the cap if BellSouth fails to correct its behavior in accordance with the Performance Assessment Plan.

XXVIII. PERIOD OF CAP

Here, we consider the timing applicable to the remedy payments cap.

Arguments

BellSouth witness Coon states without elaboration that "an absolute cap should be applied on an annual basis." ALEC witness Bursh states without elaboration "the procedural cap should apply on a rolling twelve-month basis."

DECISION

We concur with witness Coon's recommendation of a cap applied on an annual basis. It is simple and consistent with a fixed absolute cap.

The ALEC recommendation of a rolling twelve-month application would be consistent with a procedural cap and an ongoing reassessment each month. However, we find that this could present a substantial administrative burden that would frustrate the intent of a self-executing plan.

We find that the absolute cap on Tier 1 and Tier 2 payments apply on an annual basis from the effective date of the Performance Assessment Plan.

XXIX. MARKET PENETRATION ADJUSTMENT

Arguments

Witness Stallcup advances the concept that advanced and nascent services should receive special treatment under a transaction-based remedy plan, since the normal remedy payments may not provide a sufficient incentive for BellSouth to provide compliant service. He proposes that an adjustment be made for Tier 2 wherein the penalties per failed transaction, for specific measures and offerings, would be trebled if the number of monthly transactions is 100 or less.

BellSouth witness Coon does not support use of a Market Penetration Adjustment. He argues that "[t]his adjustment will unfairly penalize BellSouth for ALECs' business decisions not to include Florida in initial entry level strategies or to target other areas before moving to Florida."

As referenced above, ALEC Coalition witness Bursh recommends that Tier 2 remedies be a multiple of "n" greater than the Tier 1 remedies. The value for "n" is a function of the ALEC market penetration levels and varies from 1 to 10.

#### DECISION

We find that a Market Penetration Adjustment is inherently unnecessary with a measure-based remedy plan. This is consistent with witness Stallcup's testimony that the adjustment "is intended to assist the development of newer services with relatively low volumes." Under a measure-based remedy plan, low volumes are not an issue since the remedy payment for a failed measure will not be sensitive to volume. Accordingly, the Performance Assessment Plan shall not include a Market Penetration Adjustment.

#### XXX. COMPETITIVE ENTRY VOLUME ADJUSTMENT

##### Arguments

Witness Stallcup believes that this feature will "help protect a small ALEC's ability to establish and maintain a presence in the local exchange market." Under his proposal, per-transaction penalty amounts under Tier 1 would be trebled if there are 25 or fewer transactions per month, and doubled if there are 26 to 50 transaction per month, for a given measure. As with the Market Penetration Adjustment, witness Stallcup is concerned that under a transaction-based remedy system, the normal remedy payments may not provide a sufficient incentive for BellSouth to provide compliant service to ALECs which have a small number of transactions.

ALEC Coalition witness Bursh and Z-Tel witness Ford both believe that some sort of adjustment is needed with a transaction-based remedy system to address the small sample problem. With a transaction-based remedy system, witness Ford believes that a minimum payment is a better method for correcting the "perverse incentives at small samples." In addition, witness Ford notes that the ALEC Coalition's proposed measure-based system also addresses the small sample problem in a reasonable manner.

While the adjustment is targeted as protection for small ALECs, BellSouth witness Coon observes that the adjustment is based on the number of transactions. He believes that large ALECs will also benefit since there will be instances where the number of transactions processed for a large company may fall under the thresholds of 25 and 50. Collocation and invoice related measures could be particularly problematic since the very nature of these measures suggests that volumes would be low.

#### DECISION

We find that BellSouth witness Coon's criticisms of this proposed feature are very valid. Moreover, under a measure-based remedy plan, low volumes are not an issue since the remedy payment for a failed measure will not be sensitive to volume. Accordingly, the Performance Assessment Plan shall not include a Competitive Entry Volume Adjustment.

#### XXXI. THIRD-PARTY AUDITS OF PERFORMANCE ASSESSMENT PLAN DATA AND REPORTS

In this Section, we address whether or not third-party audits should be performed on BellSouth's Performance Assessment Plan data and reports.

#### Arguments

As stated in its prehearing statement, BellSouth believes that third-party audits of its Performance Assessment Plan data and reports are appropriate. However, BellSouth argues that the audits should be addressed at regional level as opposed to a state level, as proposed by the ALEC Coalition. BellSouth witness Coon states:

BellSouth's measurement data is produced by a regional system and managed by the same regional organization. To the extent possible, audits should be conducted regionally since many of the processes and programs are the same from state to state.

The ALEC Coalition also believes that third-party audits of BellSouth's Performance Assessment Plan data and reports are appropriate. However, the ALEC Coalition advocates for the

audits to be conducted at a state level. ALEC witness Kinard states, "many of BellSouth's processes, such as provisioning, repair, and collocation, are handled at the state level."

#### DECISION

Both BellSouth and the ALEC Coalition agree that audits of BellSouth's Performance Assessment Plan should be conducted by an independent third party. However, the parties are in disagreement as to the geographic level at which the audits should be conducted— a regional level versus the state specific level. Attachment 8 shows the specific levels (state versus region) for which BellSouth's performance measures are reported and collected. The measures shown in Attachment 8 are those proposed and provided by BellSouth in attachment DAC-1 to witness Coon's testimony.

We agree in part with BellSouth in that data for specific metrics should be audited at a regional level due to the centralized nature of BellSouth's processes and systems. For example, as shown in Attachment 8 the Average Response Time and Response Interval (OSS-1) and Interface Availability (OSS-2) metrics would be audited at a regional level since these measures are collected and reported only at the regional level.

We also agree in part with the ALEC Coalition. We find that measures related to specific functions of BellSouth's Performance Assessment Plan shall be audited at the state level to ensure that performance measures for Florida ALECs are accurately and appropriately calculated. For example, as shown in Attachment 8, the Reject Interval (O-8) and Percent Missed Installation Appointments (P-3) metrics shall be audited at a state level to get a state-specific view of these results since these measures are collected and reported at both the state and regional levels.

Third-party audits of BellSouth's Performance Assessment Plan metrics and reports are required. The metrics and reports shall be audited at a state level unless the data is only reported and collected at a regional level.

ATTACHMENT 8

BELLSOUTH'S PERFORMANCE ASSESSMENT PLAN STATE VS REGIONAL REPORT SCOPE			
No.	Measure	Reported at State Level	Reported at Regional Level
<b>Pre-Ordering</b>			
OSS-1	Average Response Time for OSS Pre-Order Interfaces & Response Interval		X
OSS-2	OSS Interface Availability (All Systems)		X
OSS-3	Interface Availability (M&R)		X
OSS-4	Response Interval (M&R)		X
PO-1	Loop Makeup Inquiry (Manual)	X	X
PO-2	Loop Makeup Inquiry (Electronic: EDI, TAG and LENS)	X	X
<b>Ordering</b>			
O-1	Acknowledgment Timeliness (Electronic)		X
O-2	Acknowledgment Completeness (Fully Mechanized, Partially Mechanized & Total Mechanized)		X
O-3/4	Percent Order Flow Through (Summary & Detail)		X

SOUTHWEST'S PERFORMANCE ASSESSMENT PLAN STATE VS. REGIONAL REPORT SCOPE			
No.	Measure	Reported at State Level	Reported at Regional Level
O-7	Percent Rejected Service Request (Fully Mechanized, Partially Mechanized & Non-Mechanized)	X	X
O-8	Reject Interval	X	X
O-9	Firm Order Confirmation Timeliness (Fully Mechanized, Partially Mechanized & Non-Mechanized)	X	X
O-10	Service Inquiry with LSR Firm Order Confirmation (FOC) Response Time (Manual)	X	X
O-11	Firm Order Confirmation and Reject Response Completeness	X	X
O-12	Speed of Answer in Ordering Center		X
O-13	LNP - Percent Rejected Service Request	X	X
O-14	LNP - Reject Interval Distribution & Average Reject Interval	X	X

BELL SOUTH'S PERFORMANCE ASSESSMENT PLAN STATE VS REGIONAL REPORT SCOPE			
No.	Measure	Reported at State Level	Reported at Regional Level
O-15	LNP - FOC Timeliness Interval Distribution & FOC Average Interval	X	X
Provisioning			
P-1	Mean Held Order Interval	X	X
P-2	Average Jeopardy Notice Interval (Electronic) & % Orders Given Jeopardy Notice	X	X
P-3	Percent Missed Installation Appointments	X	X
P-4	Order Completion Interval	X	X
P-5	Average Completion Notice Interval (Electronic)	X	X
P-6C	Coordinated Customer Conversions - % Provisioning Troubles Received Within 7 Days of a Completed Service Order	X	X
P-6	Coordinated Customer Conversions Interval	X	X
P-6A	Coordinated Customer Conversions Hot Cut Timeliness & within Interval & Average Interval	X	X

BELLSOUTH'S PERFORMANCE ASSESSMENT PLAN STATE VS REGIONAL REPORT SCOPE			
No.	Measure	Reported at State Level	Reported at Regional Level
P-6B	Coordinated Customer Conversions - Average Recovery Time	X	X
P-7	Cooperative Acceptance Testing (% xDSL Loops Successfully Tested)	X	X
P-8	% Provisioning Troubles within 30 days	X	X
P-9	Total Service Order Cycle Time	X	X
P-10	LNP - Percent Missed Installation Appointments	X	X
P-11	LNP - Average Disconnect Timeliness Interval & Disconnect Timeliness Interval Distribution	X	X
P-12	LNP - THATCHED	X	X
<b>Maintenance &amp; Repair</b>			
M&R-1	Missed Repair Appointments	X	X
M&R-2	Customer Trouble Report Rate	X	X
M&R-3	Maintenance Average Duration	X	X
M&R-4	% Repeat Troubles within 30 days	X	X

BREGSOUTH'S PERFORMANCE ASSESSMENT PLAN STATE VS REGIONAL REPORT SCOPE			
No.	Measure	Reported at State Level	Reported at Regional Level
M&R-5	Out of Service > 24 hours	X	X
M&R-6	Average Answer Time - Repair Center		X
M&R-7	Mean Time to Notify CLEC of Network Outages (M&R)	X	X
<b>Billing</b>			
B-1	Invoice Accuracy	X	X
B-2	Mean Time to Deliver Invoices	X	X
B-3	Usage Data Delivery Accuracy		X
B-4	Usage Data Delivery Completeness		X
B-5	Usage Data Delivery Timeliness		X
B-6	Mean Time to Deliver Usage		X
B-7	Recurring Charge Completeness		X
B-8	Non-Recurring Charge Completeness		X
<b>OS/DA</b>			
OS-1	Average Speed to Answer (OS)	X	
OS-2	% Answered in "X" Seconds (OS)	X	

BELLSTATE'S PERFORMANCE ASSESSMENT PLAN STATE VS REGIONAL REPORT SCOPE			
No.	Measure	Reported at State Level	Reported at Regional Level
DA-1	Average Speed to Answer (DA)	X	
DA-2	% Answered in "X" Seconds (DA)	X	
Database Update Information			
D-1	Average Update Interval for DA Database for Facility Based CLECs	X	
D-2	Percentage DA Database Accuracy For Manual Updates	X	
D-3	Percent NXXs loaded and Tested by/or prior to the LERG effective date		X
E911			
E-1	Timeliness	X	X
E-2	Accuracy	X	X
E-3	Mean Interval	X	X
Trunk Group Performance			
TGP-1	Trunk Group Performance - Aggregate	X	
TGP-2	Trunk Group Performance - Specific	X	
Collocation			
C-1	Average Response Time	X	

BELL SOUTH'S PERFORMANCE ASSESSMENT PLAN STATE VS REGIONAL REPORT SCOPE			
No.	Measure	Reported at State Level	Reported at Regional Level
C-2	Average Arrangement Time	X	
C-3	% of Due Dates Missed	X	
Change Management/Interface Outages			
CM-1	Timeliness of Change Management Notices		X
CM-2	Average Delay Days for Change Management Notices		X
CM-3	Timeliness of Documents Associated with Change		X
CM-4	Average Delay Days for Documentation		X
CM-5	Average Notice of Interface Outage		X

XXXII. FREQUENCY AND SCOPE OF AUDITS

Herein, we address the frequency and who should determine the scope of the third-party audits of BellSouth Performance Assessment Plan. All parties are in agreement on this issue.

Arguments

BellSouth, and the ALECs are in agreement that annual third-party audits should be conducted for the next five years, 2001 through 2006. BellSouth also agrees that BellSouth, the ALECs, and this Commission should jointly determine the scope of the audit.

DECISION

As noted, BellSouth and the ALEC Coalition are in agreement regarding this issue. A comprehensive independent third-party audit of BellSouth's Performance Assessment Plan data and reports for both BellSouth and the ALECs shall be conducted for the current year data for each of the next five years. BellSouth, the ALECs, and this Commission shall jointly determine the scope of the audit.

XXXIII. FINANCIAL RESPONSIBILITY FOR COSTS OF THIRD-PARTY AUDITS

In this Section, we inquire into who should be responsible for paying for the third-party audits of BellSouth's Performance Assessment Plan.

Arguments

BellSouth maintains that fifty percent of the audit costs should be shared by the ALEC or ALECs. BellSouth witness Coon argues that "BellSouth has already invested significant resources and dollars, under the direction of the Georgia and Florida Commissions, in the validation and testing of BellSouth's performance measurements by an independent third party, KPMG." BellSouth further asserts in its brief that the total costs to each ALEC would be "relatively small" and "fair and reasonable" if their share of the fifty percent is divided among the various ALECS. According to BellSouth, if the ALECs bear fifty percent of the audit costs, the ALECs, in turn, can effectively define

the scope of the audit, which can be used to determine the audit cost.

On the contrary, ALEC witness Kinard states:

Costs for these annual audits should be borne by BellSouth. BellSouth is the dominant market provider with the incentive and ability to discriminate. To ensure that BellSouth's reporting is accurate and triggers remedies designed to curb its incentives to discriminate, comprehensive annual audits are critical.

Witness Kinard also argues that "[a]udits are an integral part of a performance measurements plan to ensure BellSouth's compliance with the Telecommunications Act of 1996." BellSouth should bear the total cost of the audits, since they, as the incumbent, would need to assure they are in compliance with the Act.

#### DECISION

Notwithstanding BellSouth's general duty to comply with the Telecommunications Act of 1996, we concur with BellSouth in that a performance measurement plan is not specifically required by the Act, as implied by the ALEC Coalition. However, we support the ALECs' position that the audit costs should be borne by BellSouth. If the ALECs were to bear fifty percent of the audit costs, the process of identifying which ALECs are to be billed and the amount to be billed to each would be difficult and burdensome. For example, for those performance measures that are only collected and reported at the regional level (nine state region), non-Florida ALECs would derive some benefit.

There would be an inherent difficulty in determining which ALECs should bear the audit costs and the amount to collect from each. Additionally, since BellSouth controls the accuracy and validity of the performance measures, BellSouth is ultimately responsible for the outcome of the audit and, therefore, the underlying costs of the audit. Therefore, the cost of third-party audits shall be borne by BellSouth.

XXXIV. SELECTION OF THIRD-PARTY AUDITOR

Here we look into how a third-party auditor should be selected.

Arguments

BellSouth agrees with the proposal attached to the testimony of witness Stallcup, whereby the independent third-party auditor should be selected with input from BellSouth and this Commission. In witness Coon's testimony and in BellSouth's brief, BellSouth also is in agreement to having the ALECs participate in the third-party auditor selection process.

The ALEC Coalition proposes that BellSouth and the ALECs should jointly select the third-party auditor and this Commission would only intervene if the parties cannot mutually agree on the selection of the auditor.

DECISION

BellSouth agrees to having the ALECs participate in the selection of an independent third-party auditor only if the ALECs are to bear fifty percent of the audit costs as proposed by BellSouth above. While we are requiring BellSouth to pay for the total costs of the third-party audits, the ALECs shall have input in the selection of the third-party auditor.

While we find that the cost of third-party audits shall be borne by BellSouth, the third-party auditor shall be selected by BellSouth, with input from the ALECs and confirmed by us to ensure adherence to the general standards of the Institute of Internal Auditors.

XXXV. AUDITS BY ALECs

In this Section, we consider whether or not the ALECs should be allowed to request individual audits or "mini-audits" of specific measures or submeasures within BellSouth's Performance Assessment Plan when the ALECs believe the measures or submeasures are wrong.

Arguments

BellSouth does not believe that the ALECs need to request individual or "mini-audits" whenever they believe data collected for a measure is flawed or the report criteria for the measure is not being adhered to. We note that BellSouth's witness Coon states:

BellSouth provides the ALECs with the raw data underlying many of the BellSouth Service Quality Measurements reports as well as a user manual on how to manipulate the data into reports. The ALECs can use this raw data to validate the results in the BellSouth Service Quality Measurements reports posted every month on the BellSouth web site.

In its brief, BellSouth further argues, "the ALECs propose a method of conducting mini-audits that would be, at best, extremely burdensome and, more likely, impossible." In his testimony, BellSouth witness Coon states:

. . . there are over 80 ALECs in Florida that currently have BellSouth SQMs as part of their interconnection agreements. If each of those ALECs were allowed three mini-audits a year as proposed by Ms. Kinard, that would equate to 240 audits per year in Florida alone. If the annual comprehensive audit takes six months to complete (a conservative estimate based on comprehensive audits in Georgia and Florida), there are only six months left for mini-audits.

ALEC witness Kinard argues that for some measures (for example, LNP), the raw data is not available to the ALECS, while for some other measures, the raw data is flawed or it is not meaningful. Witness Kinard further contends that the ALECs should have the right to request a mini-audit to be performed on a particular measure or submeasure if they provide BellSouth with an advance written notice. Mini-audits, as defined by witness Kinard, are audits of "all systems, processes and procedures associated with the production and reporting of performance

measurements results for the audited/submeasure." Witness Kinard proposes that "no more than three mini-audits would be conducted simultaneously unless more than one ALEC wanted the same measure/submeasure audited at the same time, in which case mini-audits of the same measure/submeasure should count as one mini-audit for this purpose."

#### DECISION

We concur with BellSouth's position. The ALECs' request for mini-audits of the performance measures would be overly burdensome to BellSouth. As stated above, we are requiring that an audit of BellSouth's performance measures be conducted annually by an independent third party to validate the results of BellSouth's performance measurement reports posted on the BellSouth Web site. We find that this annual audit will provide adequate protection for ALECs.

We also note that we have jurisdiction to independently initiate an audit of BellSouth's performance measures if we have reason to believe that BellSouth's raw data is inadequate or seriously flawed. ALECs may petition us to exercise this authority.

BellSouth shall not have to undergo an individual audit by a third party (mini-audit) whenever an ALEC has reason to believe the data collected for a performance measure is flawed or that the report criteria are not being followed. However, the need for a mini-audit will be revisited during the six month review cycle.

#### XXXVI. RETENTION OF PERFORMANCE MEASUREMENT DATA

In this Section, we address the retention of data and reports maintained in BellSouth's Performance Assessment Plan.

#### Arguments

BellSouth proposes to retain its Performance Measurements Analysis Platform (PMAP) data for a period not to exceed 18 months. Witness Coon argues that "retention of this volume of data longer than 18 months would represent tremendous costs to