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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of	)	
	)	
Performance Measurements and Standards for Interstate Special Access Services	)	CC Docket No. 01-321
	)	
Petition of U S West, Inc., for a Declaratory Ruling Preempting State Commission Proceedings to Regulate U S West's Provision of Federally Tariffed Interstate Services	)	CC Docket No. 00-51
	)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling	)	CC Docket Nos. 98-147, 96-98, 98-141
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	)	CC Docket No. 96-149
	)	
2000 Biennial Regulatory Review - Telecommunications Service Quality Reporting Requirements	)	CC Docket No. 00-229
	)	
AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies Needed to Ensure Compliance by ILECs with Their Statutory Obligations Regarding Special Access Services	)	RM 10329

DECLARATION OF TIMOTHY KAGELE
ON BEHALF OF TIME WARNER TELECOM

1. My name is Tim Kagele. My business address is 10475 Park Meadows Drive, Littleton, Colorado 80124.

2. I have been employed by Time Warner Telecom ("TWTC") since 1995 in various capacities, and most recently as Vice President Carrier Relations and Interconnect Operations. In this role I am responsible for the overall management of ILEC, IXC, and

CLEC trading partner relationships, carrier cost control, intercompany compensation, operator service/directory assistance, and direct support for negotiation of company interconnection agreements. I also provide direct support for negotiation of performance measures, standards, and penalties for wholesale and special access service delivery. Moreover, my organization is responsible for regular monitoring and reporting of the incumbent local exchange carrier's ("ILEC's") performance for wholesale and special access services. In addition, I also have substantial operations experience, most recently as a General Manager for Time Warner Cable in the North Carolina region. In all, I have more than 26 years of experience in the telecommunications industry.

3. I have reviewed the comments of SBC Communications Inc. ("SBC"), Verizon Telephone Companies ("Verizon"), and BellSouth Communications Inc. ("BellSouth") in the above-captioned proceeding. The purpose of my affidavit is to respond to the following assertions. First, I respond to SBC's assertions that nationally mandated measurements and standards for interstate special access services are unnecessary. In particular I respond to statements by SBC that its interstate tariffs provide adequate consequences for failed service delivery, that its customers can opt into SBC's Managed Value Plan if they seek better service from SBC, that SBC has negotiated a special access performance plan with TWTC, and that additional measurements are unnecessary. Second, I respond to Verizon's assertions that performance measurements, standards, and penalties are unnecessary, since Verizon is subject to substantial competition in the provision of special access. In responding to this assertion I explain Verizon's failure to improve its maintenance and repair service (specifically its mean time to repair or MTTR), despite repeated complaints from TWTC. Third, I respond to BellSouth's,

specific assertion that nationally mandated measurements, standards, and reporting for interstate special access services would require substantial and costly modifications to its systems, and SBC's and Verizon's more general assertion that mandated measurements, standards, and reporting would impose substantial additional costs on them.

4. In its comments, SBC asserts that "standard special access tariffs already contain performance measurements and penalties for missing certain targets, including targets relating to service installation on-time performance and service interruption."[1] But the minimal guarantees for missed installations and service outage credits contained in SBC's special access tariffs are insufficient. For example, the performance measurements and penalties in SBC's interstate special access tariffs do not apply to critical aspects of service delivery, such as timely receipt of firm order confirmations (FOCs), repeat trouble reports, past due circuits, and new installation failure rate, that are addressed in the Joint Competitive Industry Group Proposal.[2] Among other deficiencies, most glaring is the absence of standard provisioning intervals, which makes it impossible for CLECs such as TWTC to provide predictable, reasonable installation times to customers.

5. SBC also states that two additional metrics, meantime to restore and failure frequency, are available to its access customers if they elect to enter into the optional Managed Value Plan ("MVP") provision of the interstate special access tariff. The MVP tariff option is simply not a feasible option for TWTC for several basic reasons. First,

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[1] SBC Comments at 11.

[2] These aspects of wholesale service are addressed in the performance measurements and standards contained in the Joint Competitive Industry Group Proposal. *See* Letter from Joint Competitive Industry Group to Michael Powell, Chairman FCC, Attachment A, Proposed ILEC Performance Measurements and Standards in the Ordering, Provisioning, and Maintenance and Repair of Special Access Services (filed Jan. 22, 2002) ("JCIG Proposal").

SBC-Ameritech's MVP tariff option requires a customer to enter into a 5-year term and meet a minimum annual billing requirement of 10 million dollars.[3] Many access customers, including TWTC, cannot meet this minimum annual billing requirement. Therefore, even if TWTC were interested in SBC-Ameritech's MVP option, it would be unable to take advantage of that option. Second, SBC-Ameritech's MVP tariff option requires that a customer meet an access to wholesale ratio of 95 percent, which disqualifies most competitive carriers.[4] Last, SBC-Ameritech's MVP tariff option contains early termination liabilities of up to 12.5 percent of the minimum annual revenue commitment ("MARC"). This requirement makes it impossible as a practical matter for a customer to extricate itself if business needs or marketplace conditions change.[5] The level of this penalty places a carrier considering the MVP option in a risky position if there is any chance, as there is in the current environment, that demand for the carrier's retail services will decline. SBC-Pacbell and SBC-SWBT MVP tariff options also contain similar, if not identical, provisions to those described for SBC-Ameritech.

6. In its comments, SBC notes that MVP customers are eligible for significant liquidated damages if the relevant operating company fails to meet its commitments.[6] SBC uses DS1 "on-time" service delivery as its example of how performance targets become increasingly more stringent over a 5 year period. In fact, in the first year of the MVP service plan, SBC is only required to meet performance standards of 90 percent for

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[3] Ameritech Operating Companies, Tariff F.C.C. No. 2, Section 19.1.

[4] Ameritech Operating Companies, Tariff F.C.C. No. 2, Section 19.3(D). Under the wholesale ration requirement, 95 percent of the sum of (1) a carrier's access service purchased and (2) the difference between its non-tariffed wholesale purchases (i.e., "local" inputs such as UNEs) and its non-tariffed wholesale purchases as of the effective date of the MVP tariff, must be access services.

[5] Ameritech Operating Companies, Tariff F.C.C. No. 2, Section 19.3 (J)(1)(a)(1-5).

[6] SBC Comments at 11.

on-time provisioning. This is at most a barely acceptable level of commercial performance for such things as on time delivery. It is not until year two that the standard increases to 95 percent. Ultimately, on-time performance caps out at 96.7 percent. Even that level is below the 98 percent performance that TWTC normally deems acceptable. Moreover, SBC has a full 12 months to "clean up its act" in order to achieve the 5 percent improvement noted between years one and two. Furthermore, although SBC describes how their MVP service assurance program works for DS1 service, it neglects to mention that the MVP program contains no similar service assurance metrics for DS3 or optical services above and beyond what is specified in the standard tariff offering.

7. SBC also states that it "has negotiated special access performance plans with Time Warner, Cable & Wireless, PacWest, and AT&T, which are tailored specifically to their needs."[7] At least as it pertains to TWTC, this statement is misleading. TWTC and SBC have held multiple business level discussions over the past several months about specific areas of special access service delivery to be measured and reported. Thus, it is technically true that SBC and TWTC have been in negotiations regarding performance requirements. However, the parties have not reached agreement about special access measurements, standards, and reporting (let alone penalties for failure to meet these requirements).

8. SBC does voluntarily provide generic reports to TWTC on a monthly basis that contain specific areas of service delivery such as on-time provisioning, failure frequency, repair restoral, repeat troubles, and percent circuit availability. It is my understanding that the capability in SBC's operational support systems ("OSS") had already been

[7] SBC Comments at 12-13.

developed to report the aforementioned areas of special access service delivery to help address the needs of other purchasers of special access. SBC has simply reported its performance in the same performance categories for competitive carriers, like TWTC, on a monthly basis. But these monthly special access reports do not meet TWTC's on-going business needs. For example, SBC is not contractually bound to provide these reports. It therefore is free to change the information reported, misrepresent the data reported (inadvertently or otherwise), or miss the standards contained in the report without suffering any penalties (financial or otherwise). Furthermore, the SBC reports do not include performance measurements addressing critically important categories of wholesale performance, such as FOC timeliness and orders in hold status.[8]

9. SBC also discusses its opposition to the need for mandatory special access measurements and standards, claiming that such requirements would derail market-based solutions and inhibit their flexibility to meet customer needs.[9] TWTC has a much different perception -- one that is based on the reality of an established competitive carrier in the marketplace. TWTC has seen no indication that SBC is serious about establishing legally binding performance measurements, standards, and penalties, let alone ones that are designed to meet the specific needs of a customer like TWTC. Rather, SBC appears willing to provide certain limited voluntary reporting to all customers, and nothing more.

10. In its comments, Verizon asserts that its special access customers are highly sophisticated, that these customers demand high quality service, and that these customer service demands are being addressed through periodic meetings with Verizon's account team. In TWTC's experience periodic meetings with Verizon's account team have not

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[8] *See* JCIG Proposal (describing the performance measurements TWTC believes are necessary).

[9] SBC Comments at 14-15.

resulted in sustained improvement in the repair and maintenance service Verizon has provided TWTC on special access circuits. This is so even in LATA 132, which is generally considered the most competitive LATA in the United States, and is generally considered to have one of the largest concentrations of sophisticated business customers, which represent the majority of TWTC's target market.

11. For over eighteen months, TWTC has tracked Verizon's MTTR for special access facilities within LATA 132, and TWTC has regularly discussed the problem of excessive MTTR and inconsistent service delivery performance with Verizon's account and operations management team.

12. On December 14, 2000, the parties met to address this problem. During this meeting, TWTC presented Verizon's management team with data for the period between June 1st and November 30, 2000 showing a MTTR of over 10 hours for special access transport service.[10] TWTC was persistent in its efforts to resolve this problem, and subsequently, these efforts yielded some initial success, as Verizon's special access MTTR eventually dropped to 5 hours and 52 minutes. As has been explained to Verizon, TWTC believes that a MTTR of 4 hours is the highest MTTR that it would deem acceptable.[11] The reduction down to 6 hours was therefore helpful, but not satisfactory. The improved MTTR was discussed by the parties during the February 7, 2001 meeting, which was scheduled specifically to follow up on Verizon's maintenance problems.[12]

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[10] *See* Appendix A, TWTC Transport MTTR Report for Bell Atlantic, from 6/1/00 to 11/30/00.

[11] *See* JCIG Proposal at 13. The JCIG proposes a standard of 2 hours MTTR for below DS3, and 1 hour for DS3 circuits and above. TWTC fully supports this standard, however, in its negotiations with Verizon, TWTC proposed 4 hours as an absolute maximum in an attempt to find some immediate resolution to the problem.

[12] *See* Appendix B, TWTC Transport MTTR Report for Bell Atlantic, from 1/1/01 to 2/3/01.

13. In addition, the parties met on March 1 to follow up on the issues discussed during the February meeting. Since the February meeting, TWTC had continued its persistent efforts to convince Verizon to improve its MTTR. At the March 1 meeting, further improvement in Verizon's special access transport MTTR was noted. At that time MTTR had reached 4 hours and 12 minutes.[13] Given this improvement, TWTC believed that the problem had been resolved, and did not persist in raising the issue with Verizon management.

14. During the following eight months, however, Verizon's special access MTTR again deteriorated to over 6 hours.[14] TWTC again raised the MTTR problems with Verizon's account and operations management team. On November 14, 2001, the parties met again to discuss the problem. During the meeting, TWTC reiterated that its internal MTTR objective was a maximum of 4 hours, and Verizon stated its objective was 6 hours, but that it always strives to resolve problems in 4 hours or less.

15. On January 24, 2002, the parties held their regularly scheduled quarterly meeting with the account and operations team to discuss, among other operational and business issues, the continued problem with excessive MTTR. During this meeting TWTC explained that Verizon's special access transport MTTR had continued to climb, and had now reached 8 hours and 3 minutes.[15]

16. In its comments, BellSouth states that the imposition of special access performance reporting requirements on BellSouth would impose such significant costs

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[13] *See* Appendix C, TWTC Transport MTTR Report for Bell Atlantic, from 3/1/01 to 3/31/01.

[14] *See* Appendix D, TWTC Transport MTTR Report for Bell Atlantic, from 10/1/01 to 10/31/01.

[15] *See* Appendix E, TWTC Transport MTTR Report for Bell Atlantic, from 10/1/01 to 12/31/01.

that it would no longer be able to compete in the provision of special access.[16] It is difficult to see how this would be the case. In fact, the incremental cost to BellSouth of providing special access performance reports should be quite small. As required by several states, BellSouth has developed the reporting capability to track its performance on a number of performance measurements related to the ordering, provisioning, and maintenance of local interconnection trunks. Local interconnection facilities and trunks use the Access Service Request ("ASR") as the ordering vehicle, which is the identical ordering vehicle that users of BellSouth's tariff-based special access service must utilize. Although some adjustment to BellSouth's internal operations practices may be required with respect to the way performance data is gathered for special access, this should not represent an overly burdensome or costly undertaking for BellSouth.

17. The same is true for all other BOCs subject to the normal reporting requirements imposed by states pursuant to Section 271. Such reporting requirements generally include FOC timeliness, on time installation, mean time to repair, and similar requirements for interconnection trunks, all of which are ordered using ASRs. Thus, any BOC that has upgraded its back office systems to meet these reporting requirements can easily make the same reports for special access, incurring very little or no additional costs.

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[16] BellSouth Comments at 11.

I declare under penalty of perjury that the foregoing is true and correct.

Timothy Kagele

Executed on this 11th day of February, 2002.

APPENDIX A

Transport TTs Bell-Atlantic MTTR Summary

Reporting from 6/1/00 to 11/30/00 11:59:59 PM

Analysis Totals	Analysis	Average Time to Restore	Average Lec Duration	Average Total Duration	New Circuit Failure	Repeat Failure
3	21 - Incorrect Optioning	18:56	10:42	67:14:00	12 out of 72	24 out of 72
14	30 - Cable (Cut/Defective)				16%	33%
4	42 - Loop Back Device					
20	20 - Wiring					
3	15 - Disconnect in Error					
4	31 - Cable (Bad Coaxial)					
5	04 - Came Clear					
1	26 - Channel Card (Misoptioned)					
1	16 - Incorrect Engineering					
1	53 - DDM (Card)					
1	59 - MUX (Low Speed Card)					
1	52 - DDM (Slot)					
1	58 - MUX (High Speed Card)					
1	55 - DDM (Software)					
1	45 - Dirty Jack					
2	43 - Bad Repeater					
1	74 - Made Busy in Switch					
5	40 - Loop Found					
2	34 - Power Failure					
1	88 - Provisioning					

Total Tickets: 72

APPENDIX B

Transport TTs Bell-Atlantic MTTR Summary

Reporting from 1/1/01 to 2/03/00

Analysis Totals	Analysis	Average Time to Restore	Average Lec Duration	Average Total Duration	New Circuit Failure
5	21 - Incorrect Optioning	7:33	5:52	82:24:00	5 out of 49
4	31 - Cable (bad coaxial)				10%
1	48- DACS (mapping)				
7	20 - Wiring				
1	47- DACS (Software)				
1	40- Loop Found				
8	04 - Came Clear				
2	68- Operations Controller				
2	30- Cable (cut/defective)				
2	53 - DDM (Card)				
1	69- Router Problems				
2	15- Disconnect In Error				
1	14- Personnel Error				
1	13- Bad Test Access Point (CWT)				
1	45 - Dirty Jack				
2	70- SS7 Failure				
1	73- Switch Hardware				
1	72- Switch Software				
3	03- No Trouble Found				
3	41- loop at head end				
49					

APPENDIX C

Transport TTs Bell-Atlantic Summary

Reporting from 03/01/01 to 3/31/01

Analysis Total	Analysis	Average Time to Restore	Average Loc Duration	Average Total Duration	Average New Circuit failure	Average Repeat Failure
3	21/Incorrect Optioning	5.22	4.12	20	13 out of 75	25 out of 75
0	40/Loop Found				17.33%	33.33%
6	74/Made Busy in Switch					
3	14/ Personnel Error					
9	04/Came Clear					
7	20/Wiring					
24	47/ DACS (software)					
6	48/ DACS (Mapping)					
1	42/ Loop Back Device					
1	16/ Incorrect Engineering					
1	58/ Mux (high speed card)					
1	11 Incorrect Order Information					
1	72 Switch Software (generic)					
3	59/ mux low speed card					
1	64 OC failure					
1	3/ No Trouble Found					
2	49/ DACS Circuit Pack					
1	24 Channel Card Defective					
1	43 Bad Repeater					
1	15 Disconnect In Error					

Total Trouble Tickets: 75

APPENDIX D

Transport TTs Bell-Atlantic MTTR Summary

Reporting from 10/1/01 to 10/31/01

Analysis Totals	Analysis	Average Time to Restore	Average Lec Duration	Average Total Duration	New Circuit Failure	Repeat Failure
1	03- No Trouble Found	19:27	6:13	284:04:00	6 out of 132	27 out of 132
8	04 - Came Clear				less than 1%	20%
1	06- Customer Action					
1	15- Disconnect In Error					
9	20 - Wiring					
1	200- DSX Module					
2	203- DSX Cabling					
2	21 - Incorrect Optioning					
6	30- Cable (cut/defective)					
1	300- Missing Cross Connects					
1	31 - Cable (bad coaxial)					
4	32- Fiber (Cut/Damaged)					
115	36- Disaster					
1	40- Loop Found at DSX					
1	41- loop at head end					
1	43- Bad Repeater					
1	47- DACS (software)					
2	49- DACS (circuit pack)					
3	53 - DDM (Card)					

Switch TTs Bell-Atlantic MTTR Summary

Reporting from 10/1/01 to 10/31/01

Analysis Total	Analysis	Average Time to Restore	Average Lec Duration	Average Total Duration
2	03- No Trouble Found	19:28	6:31	260:26:00
7	04 - Came Clear			
0	06- Customer Action			
0	15- Disconnect In Error			
0	20 - Wiring			
0	200- DSX Module			
0	203- DSX Cabling			
1	21 - Incorrect Optioning			
0	30- Cable (cut/defective)			
4	300- Missing Cross Connects			
0	31 - Cable (bad coaxial)			
7	32- Fiber (Cut/Damaged)			
92	36- Disaster			
1	40- Loop Found at DSX			
0	41- loop at head end			
0	43- Bad Repeater			
0	47- DACS (software)			
0	49- DACS (circuit pack)			
0	53 - DDM (Card)			
3	Information			

APPENDIX E

Interconnection CKTS TTs Verizon MTTR

Reporting from 10/01/01 to 12/31/01 11:59:59 PM

Total Tickets: 330

Analysis Totals	Analysis	Average Time to Restore	Average Lec Duration	Average Total Duration	New Circuit Failure	Repeat Failure
		66:44:00	51:18:00	31:40:00		

Special Access CKTS TTs Verizon MTTR

Reporting from 10/01/01 to 12/31/01 11:59:59 PM

Total Tickets: 330

Analysis Totals	Analysis	Average Time to Restore	Average Lec Duration	Average Total Duration	New Circuit Failure	Repeat Failure
2	03 - No Trouble Found	45:55	8:03	305:23	16 out of 330	99 out of 330
28	04 - Came Clear					
1	06 - Customer Action					
2	12 - Improper Testing/Installation					
7	14 - Personnel Error					
1	15 - Disconnect in Error					
2	16 - Incorrect Engineering					
1	17 - Test Assist					
31	20 - Wiring					
2	200 - DSX Module					
3	203 - DSX Cabling					
5	21 - Incorrect Optioning					
2	211 - SLC (Cross Connects)					
1	22 - Timing Problems					
8	30 - Cable (Cut/Defective)					
1	300 - Missing Cross Connects					
16	31 - Cable (Bad Coaxial)					
8	32 - Fiber (Cut/Damaged)					
134	36 - Disaster					
4	40 - Loop at DSX (Found)					
3	41 - Loop at Head End					
7	42 - SMJK/NIU					
4	43 - Bad Repeater					
14	45 - Dirty Jack					
1	47 - DACS (Software)					
6	48 - DACS (Mapping)					
6	49 - DACS (Circuit Pack)					
3	53 - ADM (Card)					
5	57 - ADM (Circuit Pack)					
16	59 - MUX (Low Speed Card)					
1	68 - Operations Controller					
4	70 - Switch Failure					
1	72 - Switch Software (Generic)					

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DECLARATION OF CAROLYN M. MAREK
ON BEHALF OF TIME WARNER TELECOM

1. My name is Carolyn M. Marek. My business address is 233 Bramerton Court, Franklin, Tennessee 37069.

2. I have been employed by Time Warner Telecom ("TWTC") since 1995 as the Vice President of Regulatory Affairs for the Southeast Region. In this position, I am responsible for the legislative and regulatory objectives for the nine southeast states, including testifying on

behalf of TWTC before various governmental bodies, developing strategies and action plans, and managing regulatory proceedings and lobbying efforts.

3. The purpose of my testimony is to respond to BellSouth's Comments in the above-captioned proceeding. Specifically, I describe our unsuccessful efforts over the last 18 months to negotiate with BellSouth for special access performance measurements.

4. On August 11, 2000, Don Shepheard of TWTC and I met with John Erwin, BellSouth Vice President of Product Management and Ad Allen, BellSouth Product Manager for Special Services. During that meeting, TWTC stated that, as a customer of BellSouth that purchases a premium product, special access, TWTC should receive performance quality commitments (including performance measurements, standards, and penalties) that equal or exceed those BellSouth provides to carriers that purchase unbundled network elements ("UNEs"). At the meeting, the BellSouth representatives agreed in principle to this request and stated that BellSouth was developing a multi-phase strategy to improve special access service quality. As BellSouth's representatives described it, this multi-phase strategy was to include (1) increased deployment of network capacity to reduce the number of orders placed in "pending facilities" or "PF" status (*i.e.*, no facilities status), (2) improved technician training to improve "mean time to repair" or "MTTR," and (3) reduced installation intervals. BellSouth's representatives also indicated that BellSouth may be able to propose performance measurements for special access in the form of a Service Level Agreement once BellSouth was granted pricing flexibility by the FCC in the markets in which TWTC operates. The parties agreed to meet again on this issue nearer to the end of the year once pricing flexibility had been granted.

5. In December 2000, BellSouth was granted pricing flexibility in all but one of the MSAs in the BellSouth region in which TWTC operates.[1] On January 15, 2001, TWTC and BellSouth resumed negotiations for a Service Level Agreement. Negotiations continued throughout the next several months.[2] On May 9, TWTC gave BellSouth a template of 19 performance measurements. On May 30 the parties met in Nashville, TN to negotiate and discuss the measurements. In periodic telephone calls held during June, the parties negotiated the extent to which BellSouth could comply with this proposal.

6. The parties then held a meeting on June 28. During that meeting, the parties discussed a revised list of special access performance rules that included the ten performance measurements that are most important to TWTC. Also at this meeting, for the first time BellSouth discussed a plan that included financial penalties for poor performance.

7. On July 12, the parties held a conference call during which we discussed the proposed measurements. BellSouth revealed for the first time during this call that the remedies it had discussed during the June 28 meeting were conditioned upon TWTC attaining minimum revenue targets. If TWTC did not meet the annual revenue targets, to be negotiated in a Pricing Flexibility contract, TWTC would be required to refund any remedies that BellSouth had paid to TWTC for poor performance. This condition became a "deal-breaker" for TWTC. From

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1 *BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, 15 FCC Rcd 24588 (2000).

2 In addition to ongoing discussions and attempts in numerous fora to obtain commitments from BellSouth to provide comprehensive special access performance measurements, standards, and penalties, as explained in its comments, on December 29, 2000 TWTC filed a letter requesting acceptance onto the Commission's accelerated docket of claims that BellSouth had failed to provide special access in compliance with Sections 201 and 202 of the Communications Act. That letter request was rejected mostly because it was impossible for TWTC to clearly document the chronic problems with BellSouth's service in the absence of reporting requirements.

TWTC's perspective, BellSouth has an obligation to provide a reasonable level of service quality to all special access customers, not just those that commit to purchasing large volumes of service. Otherwise, TWTC would be forced to reward BellSouth for its poor service by purchasing larger volumes of special access.

8. Six days later, the parties again discussed performance measurements on a conference call. During this call, TWTC rejected any proposal that would condition remedies on revenue goals. In continued efforts to reach a compromise, the parties held further conference calls on July 20, July 26, August 8, August 9, and August 16.

9. During the course of the negotiations, TWTC agreed not to participate in the upcoming Performance Measures proceeding in Tennessee if the parties could reach an agreement by the time of the August 20-23 scheduled hearing. When an agreement had not been reached after the August 16 call, TWTC presented a witness at the hearing in Tennessee advocating performance measurements with remedies for special access.

10. The parties again discussed special access performance measurements on September 4, and finally held a "best and final" negotiation session on September 14. The parties could not resolve the basic problem that BellSouth continued to insist that TWTC meet annual revenue targets and refund any remedies that BellSouth had paid for poor performance if TWTC failed to meet the targets. After it became clear that BellSouth would not commit to performance measurements and penalties in the absence of such a commitment from TWTC, TWTC stated in the meeting that it would pursue performance measurements for special access in every regulatory forum possible.

11. On September 24, I sent a *Bona Fide* Request to BellSouth, asking that they develop a local product that would be identical to special access, except that it would be offered under an interconnection agreement instead of the BellSouth interstate access tariff.[3] Under this proposal, TWTC would be able to take advantage of the performance measurements that apply to UNEs and other local facilities.

12. TWTC received a letter from BellSouth dated October 16 denying TWTC's request for this new local product.[4] The letter stated that "BellSouth has determined that it does not wish to develop such a product. As an alternative solution to Time Warner's request for end-to-end services, however, service level agreements for Special Access may be negotiated via pricing flexibility contracts." Thus, after over a year of failed negotiations, BellSouth again proposed that TWTC's goal could be met through negotiations.

13. The parties held another conference call on October 24 during which I requested a meeting with the Executive Vice President of BellSouth to discuss the frustrating negotiations process. I also informed BellSouth that TWTC would be participating in the upcoming Georgia workshops on performance measurements, advocating performance measurements for special access.

14. TWTC participated in the workshop held by the Georgia Public Service Commission ("GPSC") in Atlanta on November 8-11.

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[3] *See* Appendix A, E-mail from Carolyn Marek to Greg Harcrow of BellSouth (Sept. 24, 2001).

[4] *See* Appendix B, Letter from Laikisha Anderson of BellSouth to Carolyn Marek (Oct. 16, 2001).

15. On the morning of November 30, TWTC met with the GPSC staff to explain why performance measurements and penalties for special access were important to the advancement of competition and to explain that TWTC had been trying to negotiate with BellSouth for almost 18 months. That afternoon, Joe McCourt, TWTC Division President – East, and I met with two BellSouth Vice Presidents, Bob Bickerstaff and Quinton Sanders, as well as Ad Allen, and Marc Cathey, the Sales Assistant Vice President from the BellSouth Account Team, who had been participating in almost all of the negotiations. The BellSouth representatives agreed at this meeting that they would revisit their position and give us an update on February 1, 2002.

16. The GPSC conducted another workshop on December 10–11. Again, all parties to the docket (including TWTC and BellSouth) had an opportunity to present their positions before the GPSC staff. At the conclusion of the presentations, the staff stated that they would recommend that the Commission order BellSouth to begin measuring TWTC's "Top Ten" special access performance measurements on a diagnostic basis for six months. This issue will come before the GPSC at an agenda conference in late February 2002.

17. On a conference call held on February 1, 2002, BellSouth presented two alternatives to TWTC for special access performance rules. The first option is to create a "platinum" special access offering that would establish performance measurements with penalties but at a premium price. BellSouth stated that this product would take 9 – 12 months to develop. The second option is to renegotiate the pricing flexibility contract to include a Service Level Agreement. Under the second option, the performance measurements and penalties would purportedly be tied to maintaining the existing revenue base for TWTC's purchase of special access instead of growth revenue targets. BellSouth also provided these alternatives to TWTC in writing on February 7.

18. Although this most recent offer may appear to represent progress in the effort to obtain voluntary special access performance measurements and penalties from BellSouth, it is unlikely that this is the case. BellSouth has time and again offered to negotiate seemingly promising new proposals for special access performance measurements, standards, and penalties. But every time, BellSouth has contrived an excuse or included a "poison pill" in its offer that prevented the parties from reaching an agreement. There is very little to which BellSouth has, even now, formally committed itself. For example, BellSouth has still not formally agreed to be bound by the scaled back list of ten performance measurements that the parties have discussed and that is the subject of the GPSC proceeding. Indeed, it seems fair to say that, after over 18 months of negotiating with BellSouth, TWTC is no closer to a settlement than it was in August of 2000 when BellSouth represented that, in principle, performance measurements for special access were only a matter of it obtaining pricing flexibility.

I declare under penalty of perjury that the foregoing is true and correct.

Carolyn M. Marek

Executed on this __ day of February, 2002.

APPENDIX A

Marek, Carolyn

From: Marek, Carolyn
Sent: Monday, September 24, 2001 2:28 PM
To: 'Greg.Harcrow@bridge.bellsouth.com'
Cc: 'Patrick.Finlen@bellsouth.com'; 'cbw@farris-law.com'; Kagele, Tim; Hale, Libby; Mitchel, Dolores
Subject: BFR

Importance: High

Pursuant to Attachment 9 of the Interconnection Agreement (ICA) bewteen BST and TWTC, please consider this TWTC's request for a new local network element. TWTC requests that BST provide a local product that is technically exactly the same as special access, ordered in exactly the same manner (on an ASR), is priced exactly as it is in the federal tariff, but is afforded, at a minimum, the same performance measurements and remedies as the other unbundled network elements . Given that TWTC purchases special access on a wholesale basis to provision local exchange service to our end user customers, the current classification of "special access" is no longer appropriate to meet our business needs. I look forward to BST's prompt response to this request, but no later than 11/5/01 as provided for in the ICA. Thank-you in advance for your support,

Carolyn Marek
Time Warner Telecom
Vice-President Regulatory Affairs - Mid-Atlantic Region
(615)376-6404

APPENDIX B

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street
Room 34H71
Atlanta, Georgia 30375

Laikisha Anderson
(404) 927-4981
Fax: (404) 927-8577

October 16, 2001

Ms. Carolyn Marek
Time Warner
233 Bramerton Court
Franklin, TN 37069

RE: Reference No. GA01-A838-00

Dear Ms. Marek:

This is in response to Time Warner's September 24, 2001, request for BellSouth to develop a new local product that would be technically the same as BellSouth's interstate Special Access Services. This new product would be ordered in exactly the same manner as Special Access (i.e., on an Access Service Request) and priced at the same rates for Special Access Services in the BellSouth Access Services Tariff FCC No. 1. However, this new local product would be afforded the same performance measurements and remedy payments as Unbundled Network Elements.

Following a review of Time Warner's proposal, BellSouth has determined that it does not wish to develop such a product. As an alternate solution to Time Warner's request for end-to-end services, however, service level agreements for Special Access Services may be negotiated via pricing flexibility contracts.

If you have any questions, please feel free to contact me. Thank you for your interest and BellSouth appreciates your business.

Sincerely,

Laikisha Anderson

Laikisha Anderson
Manager, BellSouth ICS Enhanced Solutions

Cc: Greg Harcrow, Account Executive - BellSouth Interconnection Services