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December 2, 2002

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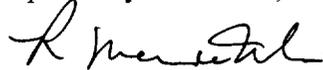
Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Joint Application by BellSouth Corporation, BellSouth  
Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision  
of In-Region, InterLATA Services in Florida and Tennessee, WC Docket  
No. 02-307 - Ex Parte Filing

Dear Ms. Dortch:

This *ex parte* letter and the accompanying Joint Supplemental Declaration of Cheryl Bursh, Sharon E. Norris and Robert M. Bell are submitted on behalf of AT&T Corp. for the purpose of responding to certain issues raised by BellSouth in its Reply Comments and *ex parte* letter dated November 13, 2002 in this proceeding regarding its initial and revised reposting policy.

Respectfully submitted,



R. Merinda Wilson

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Joint Application by BellSouth Corporation,  
BellSouth Telecommunications, Inc.  
and BellSouth Long Distance, Inc.  
For Provision of In-Region, InterLATA  
Services In Florida and Tennessee

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WC Docket No. 02-307

**JOINT SUPPLEMENTAL DECLARATION OF CHERYL BURSH,  
SHARON E. NORRIS AND ROBERT M. BELL  
ON BEHALF OF AT&T CORP.**

**December 2, 2002**

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### **Attachments:**

Attachment 1: Metrics in the Florida Permanent SQM Which Are Not Subject to BellSouth’s Revised Reposting Policy

Attachment 2: Metrics in the Tennessee Interim SQM Which Are Not Subject to BellSouth’s Revised Reposting Policy

Attachment 3: Metrics in the Tennessee Permanent SQM Which Are Not Subject to BellSouth’s Revised Reposting Policy

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Washington, D.C. 20554**

In the Matter of

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**JOINT SUPPLEMENTAL DECLARATION OF CHERYL BURSH,  
SHARON E. NORRIS AND ROBERT M. BELL  
ON BEHALF OF AT&T CORP.**

1. My name is Sharon E. Norris. I am the same Sharon E. Norris who submitted a declaration in this proceeding with AT&T's initial comments. My educational background and work experience are described in my initial declaration.

2. My name is Robert M. Bell. My business address is AT&T Labs-Research, 180 Park Avenue, Florham Park, New Jersey 07932. I received a Ph.D. in Statistics from Stanford University in 1980. From 1980 to 1998, I was promoted to Senior Statistician at RAND, a non-profit institution that conducts public policy analysis. While at RAND, I supervised the design and/or analysis of many projects, including large multi-site evaluations in the fields of preventive dentistry, drug prevention, and depression care. I also headed the RAND Statistics Group from 1993 to 1995 and taught statistics in the RAND Graduate School from 1992 to 1998. In 1998, I joined the Statistics Research Department at AT&T Labs-Research, where I am a Principal Member of Technical Staff.

3. I have authored or co-authored fifty articles on statistical analysis that have appeared in a variety of refereed, professional journals. I am a fellow of the American Statistical Association. I am currently a member of the Committee on National Statistics

organized by the National Academy of Sciences as well as the Academy's Panel to Review the 2000 Census. I have testified before this Commission in proceedings involving BellSouth's joint application for Section 271 authority in Georgia and Louisiana (CC Docket Nos. 01-277 and 02-35). My curriculum vitae is attached as Exhibit RMB-1 to my declaration that I submitted in those proceedings.

4. My name is Cheryl Bursh. I am employed by AT&T Corp. as a District Manager. I am responsible for performance measurement and remedy plan advocacy for the AT&T – Southern Region. My area of expertise is the development of an effective methodology for measuring BellSouth's performance. I have represented AT&T in several regulatory proceedings, including performance measurement workshops and hearings conducted in Louisiana, North Carolina, Florida and Georgia. I have held a variety of management positions at AT&T over the last 19½ years, involving, *inter alia*, strategic planning, sales of large business systems and telecommunications services, development for operation support systems, product marketing, and technical support for computer systems. I have a Bachelor of Science Degree from Johnson C. Smith University and a Master of Science Degree from George Washington University. I have appeared in state workshops that have covered a wide range of topics, including performance measures and performance remedy plans. I have testified before the State public utility commissions in the States in the BellSouth region. Finally, I have also testified before this Commission in proceedings involving BellSouth's joint application for Section 271 authority in Georgia and Louisiana (CC Docket Nos. 01-277 and 02-35) and BellSouth's joint application for Section 271 authority in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina (WC Docket No. 02-150).

**I. PURPOSE AND SUMMARY OF DECLARATION**

5. The purpose of this Joint Supplemental Declaration is to address BellSouth's Reply Comments and *ex parte* letter dated November 13, 2002 in which BellSouth insists that AT&T's arguments regarding its initial reposting policy are "unfounded, incorrect and unprofessional" and describes its revised reposting policy and modified data notification process.<sup>1</sup> In its Reply Comments BellSouth asserts that: (1) its reposting policy is essentially unnecessary since the data notification process and audit conducted by BearingPoint, Inc. (formerly KPMG Consulting) disclose errors in performance results; (2) BellSouth was not required to obtain State approval before implementing the reposting policy, and the issue of reposting is largely irrelevant since Verizon has stated that it does not repost data; (3) it would be unduly burdensome to repost data that do not meet its reposting threshold criteria; and (4) its criteria for reposting are reasonable.

6. Ironically, although BellSouth contends that AT&T's arguments regarding the fundamental defects in its reposting policy are meritless, BellSouth, nonetheless, has now seen fit to revise its reposting policy. Additionally, BellSouth now asserts that, commencing on December 1, 2002, it will implement a revised data notification process to "notify the state" of any "error in posted performance data."<sup>2</sup> BellSouth contends that its initial reposting policy and data notification process are eminently reasonable, and that its recent revisions thereto should

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<sup>1</sup> Varner Reply Aff. ¶ 4 (referring to AT&T's arguments as "unfounded, incorrect and unprofessional"); Varner Reply Aff., Exhibit PM-20 (describing BellSouth's revised reposting policy); and BellSouth *ex parte* letter from Kathleen B. Levitz to Marlene H. Dortch dated November 13, 2002 ("BellSouth November 13 *ex parte*") (clarifying BellSouth's new data notification process).

<sup>2</sup> BellSouth November 13 *ex parte*.

provide further assurance that all errors in its data will be disclosed. BellSouth is wrong on all counts.

7. BellSouth's initial reposting policy is fundamentally flawed, and its revised reposting policy cannot cure the defects in its original reposting policy. Furthermore, BellSouth cannot seriously contend that it was not required to seek State approval before implementing the policy since it conceals errors in its performance results that the Florida Public Service Commission ("FPSC") stated should be subject to penalties. Additionally, BellSouth's self-serving and ill-founded complaints about burden are meritless; and its original and revised data notification processes cannot serve as a suitable substitute for complete, restated performance results. Moreover, on the basis of the current record, there is no legitimate basis upon which BellSouth can contend that its data included in its Application are accurate.

**II. BELLSOUTH'S INITIAL REPOSTING POLICY CONCEALS ERRORS IN BELLSOUTH'S REPORTED DATA.**

8. As AT&T has explained, on its face, BellSouth's initial, unilaterally-developed reposting policy which was in effect during the time period that BellSouth generated the performance data included in its Application belies BellSouth's claims that its performance data are accurate and show statutory compliance.<sup>3</sup> In this regard, BellSouth's initial reposting policy applies only to certain "key" measures as defined by BellSouth and which otherwise satisfy BellSouth's criteria for reposting.<sup>4</sup> Thus, under the initial reposting policy, BellSouth will

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<sup>3</sup> See AT&T Reply at 18-22.

<sup>4</sup> Norris Decl. ¶¶ 3,7; AT&T Reply at 18-22.

not restate errors in its data for numerous measures in the performance monitoring plans ordered by the FPSC and Tennessee Regulatory Authority (“TRA”), including measures in the SEEM.<sup>5</sup>

9. Additionally, BellSouth’s initial reposting policy fails to address errors in its data for CLEC-specific reports. Furthermore, the reposting threshold criteria in its initial reposting policy are unreasonable and result in the concealment of errors in BellSouth’s performance reports. For example, BellSouth’s initial reposting policy does not correct errors for out of parity results with less than a two percent change for benchmark measures or a .5 percent Z-score change for parity measures or measures with fewer than 100 transactions. Because of these conditions, even as to so-called “key” measures, BellSouth can conceal errors that could potentially impact numerous measures. Moreover, BellSouth’s initial and revised reposting policy violates the FPSC Performance Measure Order that found that BellSouth must provide complete and accurate performance results, and that penalties will be assessed whenever BellSouth fails to do so. The DOJ also has expressed concerns about BellSouth’s reposting policy.<sup>6</sup>

10. In its Reply Comments, BellSouth contends that the data included in its Application (which were generated while the initial reposting policy was in effect) are accurate, and that its initial reposting policy that has been in effect is eminently reasonable.<sup>7</sup> In an attempt to bolster these arguments, BellSouth contends that: (1) its reposting policy is, in fact, superfluous given the existence of other mechanisms (*i.e.* the data notification process and the

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<sup>5</sup> See Norris Decl. ¶¶ 6-10.; AT&T Reply at 19-20.

<sup>6</sup> DOJ Eval. at 9-10.

<sup>7</sup> Varner Reply Aff. ¶¶ 4-23.

audit conducted by BearingPoint which ensure that errors in its performance data are disclosed; (2) its initial reposting policy did not require State approval; (3) the issue of reposting is largely irrelevant given that Verizon has indicated that it does not restate data; (4) it would be unduly burdensome to restate data for measures that do not meet BellSouth's threshold criteria; and (5) the conditions for reposting in its initial policy are reasonable. BellSouth's arguments cannot withstand scrutiny.

**A. The Data Notification Process Does Not Result In Restatements Of BellSouth's Performance Data.**

11. BellSouth contends that its "reposting policy likely is not even necessary, given the many other disclosure mechanisms that exist."<sup>8</sup> In embellishing this misguided contention, BellSouth asserts that "AT&T confuses the data reposting policy with the processes already in place specifically for the purpose of identifying and providing notice of any discovered data errors."<sup>9</sup> BellSouth further contends that its data notification process is a "principal vehicle[ ]" for advising CLECs and regulatory bodies of errors in its reported results.<sup>10</sup> BellSouth's arguments are patently frivolous.

12. AT&T is not "confused" about the processes that BellSouth uses to alert CLECs and the States about errors in its data. The reality is that BellSouth's arguments are designed to obscure the distinct differences between its data reposting policy and data notification process. As AT&T has explained, the data notification process is designed to notify CLECs and State regulators about metrics changes that BellSouth plans to implement in the

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<sup>8</sup> BellSouth Reply at 30.

<sup>9</sup> Varner Reply Aff. ¶ 5.

<sup>10</sup> *Id.* ¶ 12.

*future* to resolve systematic defects in the performance monitoring and reporting process that may have caused some (but not all) of the errors in BellSouth's data.<sup>11</sup> Even a cursory examination of BellSouth's data notifications reveals that they contain no restatements of BellSouth's current or historical results.<sup>12</sup> Thus, although BellSouth accuses AT&T of beclouding the record, BellSouth's arguments are nothing more than an attempt to obfuscate the fundamental differences between the reposting policy and the data notification process.

13. Notably, in its Reply Comments, BellSouth states that “[o]n a going-forward basis, concurrent with the December 1, 2002 Data Notification, BellSouth will provide, in addition to the Data Notification, an additional category identifying any validated data issues affecting the calculated measurement results that are not scheduled for a fix.”<sup>13</sup> In its November 13 *ex parte*, BellSouth clarified the contours of its revised data notification process. In this regard, BellSouth states that, commencing on December 1, 2002, it will report “any instance of a validated data issue that is not already reported on the Bearing Point list or in monthly Data Notification.”<sup>14</sup> The *ex parte* also includes two illustrative examples of the types of “data issues” that will be captured in these notices commencing in December. However, the illustrative examples simply highlight that the modified data notification process to be implemented in December will not contain actual restated performance results.

14. BellSouth contends that the data issues identified as “Provisioning Measures <0.5% Impact” and “Customer Trouble Report Rate/No Parity Impact” in Varner

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<sup>11</sup> AT&T Reply at 22-24.

<sup>12</sup> *Id.* at 23-24.

<sup>13</sup> Varner Reply Aff., ¶ 14.

Reply Ex. PM-7 reflect the kind of information that will be reported in December. The data issue described as “Provisioning Measures/<0.5% Impact” states that, although BellSouth’s provisioning data for loop and port combinations are supposed to be disaggregated into Switch-Based and Dispatch-In orders, BellSouth erroneously included Switch-Based orders in the Dispatch-In sub-metric when reporting performance results.<sup>15</sup> BellSouth contends that this error affects four provisioning measures in Tennessee and ten provisioning measures in Florida; however, BellSouth’s issue description does *not* contain the actual restated performance results for these measures.

15. Similarly, in describing the data issue identified as “Customer Trouble Report Rate/No Parity Impact,” BellSouth admits that it “is undercounting line count for Retail ADSL by approximately 6% regionally.”<sup>16</sup> However, BellSouth’s issue description is bereft of the actual, corrected, restated data for those measures which have been affected by this error.

16. Through the welter of facts, the following salient fact emerges with clarity: the data notification (whether initial or as modified) does not serve and cannot serve as a suitable surrogate for restatements which correct errors in BellSouth’s current and historical SQM and MSS reports. Notwithstanding BellSouth’s suggestion to the contrary, repostings are, in fact, BellSouth’s exclusive mechanism for notifying and quantifying for CLECs and regulators the known and *actual* errors in its current and historical performance reports.

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<sup>14</sup> BellSouth’s November 13 *ex parte*.

<sup>15</sup> See Varner Reply Aff. Ex. PM-7.

<sup>16</sup> *Id.*

**B. BearingPoint Does Not Report Errors In Data For All Data Months.**

17. Equally infirm is BellSouth's argument that CLECs and regulators are advised of any errors in its performance data as a result of the third party audit conducted by BearingPoint which purportedly "reports any data issues/discrepancies identified during the audit through its periodic status reports."<sup>17</sup> Indeed, BellSouth implies that, in light of the BearingPoint audit, its reposting policy is unnecessary.<sup>18</sup> This argument is fundamentally flawed.

18. There are distinct differences between BellSouth's reposting policy and the BearingPoint audit. BellSouth has implemented a reposting policy which presumably will remain in effect as long as BellSouth issues performance reports. In stark contrast, the BearingPoint audit is scheduled to be completed on December 31, 2002. Thus, BearingPoint will not be auditing BellSouth's data after the completion of the audit.

19. Furthermore, BellSouth's (albeit flawed) reposting policy purportedly corrects errors in the monthly MSS Reports for those measures that otherwise meet the reposting criteria. Notably, BearingPoint has not audited all measures in all performance reports on a continuous basis. Thus, for example, during the metrics replication phase of the audit, BearingPoint generally replicates three months of data. If no errors are detected in the data for a given measure, BearingPoint does not reaudit the data for the measure in subsequent performance reports. Thus, BearingPoint does not evaluate and therefore cannot detect errors in performance data generated after it has concluded its audit of a particular measure. Additionally, SEEM calculations are not being audited in Florida. Against this backdrop, it is absurd for

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<sup>17</sup> Varner Reply Aff. ¶ 5.

<sup>18</sup> See BellSouth Reply at 30; Varner Reply Aff. ¶ 5.

BellSouth to suggest that the BearingPoint audit has disclosed and will disclose all errors in BellSouth's performance reports.

**C. BellSouth's Unilateral Implementation Of The Reposting Policy Is Not Justified.**

20. In an effort to rationalize its unilateral implementation of the reposting policy, BellSouth contends that "State Commission approval of the [reposting] policy is not necessary given BellSouth's obligation to implement policies necessary to effectuate its obligation to post accurate performance data."<sup>19</sup> BellSouth's analysis is demonstrably unsound.

21. BellSouth cavalierly ignores that the FPSC explicitly ordered BellSouth to issue complete and accurate performance data. Furthermore, over BellSouth's strenuous objections, the FPSC also found that BellSouth should incur penalties for inaccurate and incomplete performance results. Moreover, although BellSouth expressed confusion as to the types of errors that might render its performance data inaccurate, the FPSC made it ineluctably clear that a failure to calculate any performance data in accordance with the business rules in the SQM will result in a penalty.<sup>20</sup> However, BellSouth's unilateral reposting policy makes a mockery of the FPSC's Order since BellSouth can effectively conceal errors in its performance data and, therefore, avoid the imposition of penalties for inaccurate performance results.<sup>21</sup>

22. BellSouth also suggests that the issue of reposting is largely irrelevant since Verizon has made statements suggesting that it does not repost.<sup>22</sup> BellSouth ignores that

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<sup>19</sup> Varner Reply Aff. ¶ 9.

<sup>20</sup> AT&T Reply at 21-22.

<sup>21</sup> *Id.*

<sup>22</sup> BellSouth Reply at 30.

Verizon also has gone to great lengths to assure this Commission in the *New Jersey 271 Proceeding* that its data are accurate by emphasizing that it is required to restate its performance results and pay penalties for inaccurate performance reports. Thus, for example, in responding to challenges regarding the accuracy of its data, Verizon emphasized that any concerns about concealed errors in its performance results had been rendered moot as a result of an order issued by the New Jersey Board of Public Utilities (“NJBPU”) which requires Verizon “to restate its performance reports and to revise any credits under the Plan when it identifies *any* inaccuracies in its performance results.”<sup>23</sup> In the *New Jersey 271 Proceeding*, Verizon also went to great lengths to point out that it “is required to pay \$1,000 to a state fund for every day that a performance report contains any ‘inaccurately report[ed] . . . performance data relating to the [Carrier-to-Carrier] Guidelines . . . .’”<sup>24</sup>

23. Indeed, the New Jersey Incentive Plan provides that a performance report is deemed “incomplete and requiring revision if VNJ fails to report any metric that the Board required be implemented or if VNJ inaccurately reports any performance data relating to the [Carrier-to-Carrier] Guidelines,” and that Verizon must “revise and re-file in a timely fashion any performance report, in full, that is incomplete.”<sup>25</sup> The New Jersey Incentive Plan also provides that, 60 days after Verizon submits each monthly performance report to the Board, “an officer of Verizon New Jersey, Inc. shall certify that VNJ has determined that either (a) no

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<sup>23</sup> See Joint Reply Declaration of Elaine M. Guerard, Julie A. Canny, and Marilyn DeVito ¶ 27, attached to Reply Comments of Verizon New Jersey, *New Jersey 271 Proceeding*, FCC Docket No. 01-347 (emphasis added).

<sup>24</sup> Guerard/Canny/DeVito Reply Decl. ¶ 34, *New Jersey 271 Proceeding*.

<sup>25</sup> Verizon New Jersey Incentive Plan for the State of New Jersey, G2, G2(a).

revisions to the monthly report are necessary or have been implemented, or (b) that revisions to the monthly report are necessary and have been or will be implemented.”<sup>26</sup> Thus, Verizon does restate its data in New Jersey and faces substantial penalties for inaccuracies in performance results which are not corrected in a timely fashion. Moreover, Verizon cited the provisions in the New Jersey Incentive Plan in the *New Jersey 271 Proceeding* and argued that these provisions further assure the accuracy of its performance reports. Significantly, in the *New Jersey 271 Proceeding*, this Commission also took “comfort in the provisions in the IP [New Jersey Incentive Plan] which impose penalties for late, inaccurate, or incomplete performance reports.” *New Jersey 271 Order* ¶ 180 (footnote omitted).<sup>27</sup>

**D. BellSouth’s Cries Of Burden Are Disingenuous.**

24. BellSouth goes on *ad nauseum* in its Reply Comments detailing “the cost and effort entailed in reposting performance data.”<sup>28</sup> BellSouth contends that these processes are extraordinarily time-consuming. Indeed, BellSouth states that “[t]he rerun (the loading of the data, the reprocessing of the data, the reformatting and publication of the reports) typically will take 3 to 4 days to complete on the servers for each month reposted.”<sup>29</sup> BellSouth contends that

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<sup>26</sup> *Id.* G(3).

<sup>27</sup> Verizon is now challenging the authority of the NJBPU to require Verizon to restate data errors and pay penalties for inaccurate performance results. *See* Brief on Behalf of Verizon New Jersey, Inc. in Support of its Motion to Stay, filed September 27, 2002 at 21, Superior Court of New Jersey Appellate Division, on appeal from Order of the State of New Jersey Board of Public Utilities, Docket Nos. TX 95120631, TX 98010010 (noting that “[t]he ‘self-executing’ penalties imposed on Verizon NJ for the submission of ‘inaccurate’ reports under the March 2002 Order are not only outside the Board’s statutory authority, but would operate without any modicum of due process . . . [and] should be stricken on that basis alone.”)

<sup>28</sup> Varner Reply Aff. ¶ 10.

<sup>29</sup> *Id.*

“another 2 to 3 days is spent validating the results.”<sup>30</sup> BellSouth also suggests that it would have to “double its already huge capacity” if it had to repost data that do not otherwise fit its selection criteria.<sup>31</sup> BellSouth’s arguments are flawed.

25. Implicit in BellSouth’s arguments is the assumption that it must repost *all* reports for a month in order to repost incorrect data for a single measure. Obviously, this is not the case. BellSouth does not have to rerun the entire report for all measures to correct an error in a single measure; it simply has to restate the performance results for the affected measure. Furthermore, although BellSouth claims that it would be unduly burdensome to restate erroneously reported data for measures that do not satisfy its reposting criteria, given the critical importance of accurate performance data to assess compliance and BellSouth’s heavy reliance on its performance data to satisfy checklist compliance, BellSouth’s arguments regarding burden ring hollow.

**E. The Reposting Threshold Criteria Are Flawed.**

26. In an effort to lend color to its assertions that its initial reposting policy is appropriate, BellSouth contends that its initial reposting policy is carefully crafted to ensure that BellSouth restates only “potentially meaningful changes to its performance data.”<sup>32</sup> Thus, for example, BellSouth contends that its decision to use a 100-transaction threshold for reporting errors in data for “key” measures is eminently reasonable because “the Georgia PSC used 100 transactions as the dividing line in determining whether certain services should be considered as

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Varner Reply Aff. ¶ 16.

nascent and subject to special treatment in the SEEM.”<sup>33</sup> Implicit in BellSouth’s argument is the notion that the Georgia PSC somehow determined that metrics with fewer than 100 transactions are not worthy of penalty payments under the SEEM. BellSouth’s arguments are patently frivolous and distort the Georgia PSC’s decision.

27. The frivolity of BellSouth’s argument is evidenced by the fact that the Georgia PSC, in recognition of the critical importance of nascent services, imposed *additional* penalties when BellSouth fails certain measures with more than 10 and less than 100 transactions. Thus, unlike BellSouth’s reposting policy which *excludes* data containing fewer than 100 transactions, the Georgia PSC, expressly recognizing the critical importance of low-volume metrics for nascent services, imposed *additional* remedy payments for performance failures affecting such metrics.<sup>34</sup>

28. In an attempt to downplay the significance of its unilateral decision to shield from scrutiny errors in its data affecting measures containing fewer than 100 transactions, BellSouth contends that “[t]he percentage of transactions reported for those sub-metrics with less than a 100-transaction volume represents less than 4.5% of transactions in the sub-metrics that failed and less than 0.5% of all transactions reported in the UNE and Resale categories of the

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<sup>33</sup> *Id.* ¶ 20.

<sup>34</sup> The Georgia SEEM provides that “Market Penetration Adjustments will be applied . . . to enhance competition for small volume and nascent products.” Georgia SEEM, Varner Aff., *Georgia/Louisiana 271 Proceeding*, Georgia/Louisiana Exhibit PM-8 at 4.33. The Georgia SEEM further states that “[t]hese additional payments will only apply when there are more than 10 and less than 100 observations for those measures [listed in the plan] on average statewide for a three-month period.” *Id.* The Georgia SEEM also serves as the Interim SEEM in effect in Tennessee until the permanent plan is implemented, no later than December 1, 2002.

MSS for Tennessee.”<sup>35</sup> BellSouth also contends that, in Florida, the percentage of transactions with fewer than 100 transactions “represent[s] less than 1% of the transactions in the submetrics that failed and less than 0.1% of the total reported transactions reported in the UNE and Resale categories of the MSS. . . .”<sup>36</sup> BellSouth’s arguments are nothing more than a red herring.

29. The appropriate comparison is the total number of misses involving metrics with fewer than 100 transactions divided by the total number of misses reported during the reporting period. According to BellSouth, its Florida results in August show that it had a total of 135 misses, 76 of which involved fewer than 100 transactions.<sup>37</sup> Thus, under BellSouth’s initial reposting policy, 56% (76 divided by 135) of the August sub-metrics with performance failures would not be corrected even when BellSouth knows the data are incorrect. BellSouth’s September MSS report for Florida references 183 missed sub-metrics, 82 of which have fewer than 100 transactions. Thus, 45% of the sub-metric misses in September will not be corrected even if found to be incorrect.

30. Similarly, for Tennessee, BellSouth concedes that of the 81 missed sub-metrics in August, 69 had fewer than 100 transactions.<sup>38</sup> Thus, under the initial reposting policy that BellSouth touts in its application, BellSouth will not correct data affecting 85% (69 divided by 81) of the missed sub-metrics. It is absurd for BellSouth to suggest that its data for the far majority of its performance misses should not be subject to correction.

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<sup>35</sup> Varner Reply Aff. ¶ 21.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* ¶ 21 (noting the 76 sub-metrics that could have been affected by the 100-transaction threshold in August) and *id.* ¶ 68 (showing a total of 135 misses in August).

<sup>38</sup> *See Id.* ¶¶ 20, 68.

31. Additionally, BellSouth blithely ignores that, by refusing to repost data for measures covering fewer than 100 transactions, BellSouth can effectively reduce penalty payments that would otherwise be due under transaction-based penalty plans, such as the Interim Tennessee SEEM. In this regard, BellSouth asserts that “[i]f a change in parity occurs from a ‘no’ to a worse ‘no,’” BellSouth will repost the data if the performance for CLECs for a benchmark measure “changes by more than 2 percentage points,” or if the Z-score changes by more than 0.5 for parity measures.<sup>39</sup> As noted above, in such circumstances, BellSouth is only required to repost “key” measures with a reported volume of at least 100 transactions.

32. Assume, *arguendo*, that BellSouth discovers that, as to a failed measure, its performance was actually worse than its reported results. Assume further that BellSouth initially reported that it failed 30 of 99 transactions for this measure, but then discovered that it actually failed 90 of 99 transactions. Under BellSouth’s reposting policy, it would not repost this error because the measure involves fewer than 100 transactions. Notably, under a transaction-based plan, BellSouth’s penalties increase with the number of transactions. However, BellSouth’s reposting policy can reduce its financial exposure for plainly discriminating conduct under a transaction-based plan.

33. Thus, for example, assume *arguendo* that, under the Interim Tennessee SEEM, BellSouth would incur a penalty of \$400 per transaction for failing a benchmark measure with a 95% performance standard. Assume further that the SEEM would allow 4.95 misses for this benchmark measure (99 x 0.5). If BellSouth reported only 30 performance failures based upon its erroneous performance results, it would owe a penalty of approximately \$10,400.

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<sup>39</sup> *Id.* ¶ 17.

However, if BellSouth restated its results to correct errors in its reports, it would be required to pay a penalty of approximately \$34,400 – more than three times the penalty computed under BellSouth’s erroneous performance report. Thus, BellSouth’s reposting policy not only operates to shield errors in its reported results, but it also operates to inappropriately reduce or eliminate penalties that are properly due to the CLECs (or the State) for plainly discriminatory or subpar performance.

34. Additionally, when the original MSS report shows that a sub-metric is out of parity, BellSouth imposes two conditions before reposting the SEEM results. For benchmarks, BellSouth requires (with limited exceptions) at least a “2% deviation in the performance at the sub-metric level,” and “at least 100 CLEC transactions in the sub-metric.” In its Reply Comments, BellSouth tries to justify these two conditions by noting that, for 100 transactions, a change of 2% requires a change of two transactions.<sup>40</sup> BellSouth also claims that its reposting policy, which requires (under certain circumstances) that at least two records change before reposting is required, assures that only “meaningful” changes are reposted.<sup>41</sup> However, BellSouth’s logic fails for any other CLEC sample size.

35. BellSouth proposes not to repost for sample sizes below 100. If, as BellSouth contends, a change of 2 transactions out of 100 (2%) is meaningful, then certainly a change of 2 out of 40 transactions (5%) is meaningful. Yet, for sample sizes less than 100, BellSouth refuses to repost no matter how many transactions are in error. BellSouth’s argument

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<sup>40</sup> Varner Reply Aff., ¶ 20.

<sup>41</sup> *Id.*

also fails for CLEC samples sizes above 100. For example, for a CLEC sample size of 1000, up to 19 transactions could be misclassified before resulting in a change of 2%.

36. For parity sub-metrics that are out of parity in the original MSS report, BellSouth again places two conditions for reposting. With limited exceptions, BellSouth requires “a change of .5 in the z-score at the sub-metric level,” and “at least 100 CLEC transactions in the sub-metric.” Again, the requirement of at least 100 CLEC transactions allows BellSouth to conceal arbitrarily large changes in the data for sub-metrics with small sample sizes. Similarly, for very large sample sizes, BellSouth could avoid recalculating remedy amounts that should change by thousands of dollars.

**III. BELLSOUTH’S REVISED REPOSTING POLICY CAN CONCEAL ERRORS IN PERFORMANCE DATA.**

37. Although BellSouth contends that its initial reposting “policy is designed to best meet the needs of regulators, CLECs and BellSouth alike,” it asserts in its Reply Comments that it has now, nonetheless, revised its policy to capture “those measures included in a State’s specific SEEM plan with the corresponding sub-metric.”<sup>42</sup> However, even a cursory examination of BellSouth’s revised reposting policy reveals that it too suffers from fundamental infirmities.

38. The revised reposting policy contains, in large measure, the same deficient threshold criteria for reposting which are in BellSouth’s initial policy. Thus, the new policy, like its predecessor, requires a 2 percent change in benchmark metrics, a .5 Z-score change for parity measures, and a 100-transaction threshold in certain circumstances. For the reasons discussed

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<sup>42</sup> Varner Reply Aff. ¶¶ 22-23.

above, these criteria are fundamentally flawed and inappropriately permit BellSouth to conceal errors in its data.

39. Unlike the prior reposting policy, BellSouth's new policy states that all SEEM measures are subject to reposting if they otherwise meet the threshold criteria, and that repostings and SEEM recalculations will be based on changes in the MSS reports. These provisions are also problematic.

**A. The Revised Posting Policy Omits Important Measures.**

40. The only measures that are subject to reposting under BellSouth's new policy are those metrics in the SEEM. BellSouth contends that its revised reposting policy is reasonable because it applies only to metrics "that the state commission has determined critical enough to be included in the penalty plan . . . ."<sup>43</sup> BellSouth has provided no information regarding the effective date when all SEEM measures will be included in the reposting policy. Additionally, although BellSouth contends that all measures in the SEEM that otherwise satisfy its criteria are subject to reposting, its revised reposting policy, rather curiously, excludes Measure O-4 – Flow-Through Detail (ALEC specific) – a measure in the Florida and Tennessee SEEMs.

41. More fundamentally, there is no sound basis for BellSouth's contention that any measure omitted from a penalty plan is somehow unimportant to CLECs and competitive entry. Under BellSouth's reposting policy, scores of metrics that are critical to

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<sup>43</sup> Varner Reply Aff. ¶ 23.

competitive entry are excluded from the policy.<sup>44</sup> For example, under BellSouth's reposting policy, only 37 of the 74 measures in the Florida SQM are subject to correction if errors are detected. Remarkably, although BellSouth's Reply Comments suggest that these omitted metrics are superfluous, it admitted in its opening brief and accompanying affidavits that the State of Georgia viewed such metrics to be "essential" in evaluating BellSouth's performance vis-à-vis the CLECs.

42. In that connection, in its Application, BellSouth notes that "[w]hile the FPSC and the TRA each adopted a specific set of performance measurements and enforcement mechanisms for use on a permanent basis in the states, both state commissions were provided data based on the Georgia SQM for 271 purposes."<sup>45</sup> BellSouth's Application also includes a lengthy discussion of the proceedings culminating in the development of the Georgia SQM. Significantly, in its own Application, BellSouth asserts that when the Georgia PSC entered its Order on January 16, 2001, regarding a performance monitoring plan, the Georgia PSC noted that it was adopting "comprehensive measures designed to 'monitor all areas of support,'" and that "a well-defined, effective and meaningful set of performance measurements is essential in order to provide the [GPSC] with the information necessary to assess BellSouth's service to CLECs . . . ."<sup>46</sup> Thus, although BellSouth now attempts to rationalize its revised reposting policy by suggesting that any metrics omitted from its reposting policy are unimportant,

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<sup>44</sup> See Attachment 1 listing the Florida metrics in the SQM which are not subject to reposting in BellSouth's revised reposting policy, Attachment 2 listing the Tennessee interim metrics in the SQM which are not subject to reposting, and Attachment 3 listing the Tennessee permanent metrics in the SQM which are not subject to reposting.

<sup>45</sup> Varner Aff. ¶ 16.

<sup>46</sup> *Id.* ¶ 20.

BellSouth's arguments are belied by its own Application which concedes that the Georgia PSC deemed such measures to be the "essential" framework against which BellSouth's performance must be assessed.

43. Furthermore, BellSouth cannot seriously contend that the metrics which are not subject to reposting are unimportant to the CLECs and regulatory bodies. The measures which are excluded from BellSouth's reposting policy include, *inter alia*: O7 – Percent Rejected Service Requests; P2 – Average Completion Notice Interval; and P5 – Average Jeopardy Notice Interval and Percentage of Orders Given Jeopardy Notice.<sup>47</sup> These measures, as well as other measures excluded from the reposting policy, are important to competitive entry.

44. For example, rejection rates (in combination with flow-through rates) are important in assessing whether a BOC is providing access to its OSS in a nondiscriminatory manner.

45. Furthermore, status notices such as jeopardy notices and completion notices are absolutely critical to CLECs. Jeopardy notices advise CLECs that BellSouth cannot meet a confirmed due date. Completion notices advise CLECs that the ordered service has been provisioned. Importantly, this Commission has consistently held that the receipt of such status notices, on a timely basis, is critical to a CLEC's ability to compete. Indeed, in its *New Jersey 271 Order* the Commission reiterated that the timely receipt of status notices is "an important aspect of a competing carrier's ability to serve its customers at the same level of quality as a

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<sup>47</sup> See Attachments 1-3.

BOC.” *New Jersey 271 Order*, ¶ 93.<sup>48</sup> BellSouth, however, in accordance with its revised reposting policy, will not restate its performance results to correct errors in its data on measures of Average Jeopardy Notice Interval, Percentage of Orders Given Jeopardy Notice, and Average Completion Notice Interval. There is no legitimate basis upon which BellSouth should be permitted to shield errors in its performance results for these and other performance measures in the performance monitoring plans approved by the State.

**B. BellSouth’s Reliance On The MSS To Trigger SEEM Payments Is Misplaced.**

46. BellSouth’s revised reposting policy indicates that the recalculation of SEEM payments resulting from errors in the reported results involves a two-step process. First, the policy states that “[p]erformance sub-metric calculations for SEEM measures as reflected in the MSS that result in a shift in the performance in the aggregate from an ‘in parity’ condition to an ‘out of parity’ condition will be available for reposting.”<sup>49</sup> Second, the policy provides that “[w]hen updated performance data has been made available for reposting . . . BellSouth will recalculate applicable SEEM payments.”<sup>50</sup> Thus, according to the reposting policy, a lack of parity condition in the MSS (resulting from a shift in performance due to data errors) will trigger SEEM payments. However, BellSouth’s policy is fundamentally flawed because the MSS reports and the SEEM are governed by different methodologies that can generate different performance results.

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<sup>48</sup> See also *Second Louisiana 271 Order*, ¶ 131 (noting that jeopardy notices are “critical” to a CLEC that has previously received a committed due date.)

<sup>49</sup> Varner Reply Aff., Ex. PM-20, ¶ 2.

<sup>50</sup> *Id.* ¶ 6.

47. For example, the MSS reports – a summary report that BellSouth created voluntarily for the state and federal Section 271 proceedings – contain only *aggregate* CLEC performance data.<sup>51</sup> The SEEM, however, is a two-tiered remedial scheme under which Tier I remedies are paid for subpar performance affecting individual CLECs, and Tier II remedies are paid to the State. Because BellSouth’s reposting policy appears to apply only to BellSouth’s MSS reports, BellSouth’s reposting policy apparently does not require the correction of *CLEC-specific* SQM reports when errors are detected in BellSouth’s performance results.

48. Additionally, BellSouth’s reliance on the MSS report to trigger recalculations in the SEEM could conceal errors in CLEC-specific performance reports that could warrant the payment of Tier 1 remedy payments. In this regard, assume *arguendo* that BellSouth erroneously omitted from its performance results data for an individual CLEC. Assume further that the omitted data show that BellSouth failed the performance standard for the individual CLEC. Because the MSS reports aggregate data for all CLECs, it is possible that the inclusion of the omitted data in BellSouth’s MSS report would not result in an overall performance failure on the measure for all CLECs in the aggregate.

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<sup>51</sup> BellSouth’s revised reposting policy lacks clarity. The first paragraph in BellSouth’s revised reposting policy states that “BellSouth will make available reposted performance data as reflected in the Service Quality Measurement (“SQM”) reports and the Monthly State Summary (“MSS”) report . . . .” Thus, at first blush, the revised reposting policy indicates that BellSouth will repost performance data in the SQM and MSS reports. However, the remainder of the reposting policy – which sets forth the specific criteria governing the reposting of performance results – states that the MSS reports will be reposted. Thus, it appears that only the MSS reports are subject to reposting. The MSS reports, which are summary reports that BellSouth has voluntarily created, contain CLEC aggregate data, while the SQM reports (which are required to be filed in the states) contain CLEC aggregate and CLEC-specific data.

49. For example, assume that, as to a benchmark measure with a 95% performance standard, CLEC A has 100 transactions and the other CLECs combined have 900 transactions. Assume further that, in BellSouth's original MSS report, BellSouth reported that its performance for the given measure was 100% for CLEC A and 96% for the other CLECs combined, resulting in an overall rate of 96.4%. Furthermore, assume that after the original MSS report was issued, BellSouth discovered errors in its data, and that its performance for CLEC A was actually 90%. Because the corrected overall rate of 95.4% for CLECs in the aggregate would still be above the 95% benchmark standard, BellSouth's reposting policy suggests that it would not repost SEEM results for CLEC A, even though its performance for this CLEC fell well below the benchmark.

50. Furthermore, the methodology used to determine parity in SEEM differs substantially from the statistical methodology used in the MSS reports. Unlike the MSS reports, in SEEM, data are disaggregated into cells to create like-to-like comparisons and then reaggregated using the truncated Z statistic. The MSS reports use a fixed critical value of -1.645, while SEEM uses a balancing critical value which varies with sample size and may be greater or less than -1.645. Consequently, Z scores may differ greatly between the MSS report and the SEEM for a given measure. Because the statistical methodologies in the MSS and the SEEM are different, it is possible that the MSS report for a given measure could show parity, while the SEEM report for the measure could show that a lack of parity exists.

51. For example, assume that the Z-score for a parity metric in the original MSS report is -0.5, and that BellSouth detects an error leading to a corrected value of -1.5. It is likely that SEEM's truncated Z-score could also change by about -1.0. If that change was also

from -0.5 to -1.5 and the balancing critical value fell in the interval -0.5 to -1.5, then the SEEM determination would change from in parity to out of parity. Even if the balancing critical value under SEEM was -2.5, the SEEM determination would change if, for example, the truncated Z-score changed from -2.0 to -3.0. However, because both the original and corrected MSS Z-scores exceed the fixed critical value of -1.645 used in the MSS reports, BellSouth’s policy suggests that it would not repost any SEEM results for that metric. Thus, the reposting policy is flawed because it appears to rely on a lack of parity condition in the MSS to trigger SEEM payments. BellSouth’s reliance on MSS reposting as the trigger for SEEM recalculation is inappropriate and can result in instances where a SEEM recalculation should have been performed, but was not.

**C. The MSS And SEEM Have Different Levels Of Disaggregation.**

52. BellSouth’s apparent reliance on the MSS reports to trigger SEEM payments is also flawed because the MSS and SEEM have different levels of disaggregation for performance measures. Indeed, there are sub-metrics in SEEM which are not in the MSS. Thus, for example, the Florida SEEM includes the following sub-metrics which are excluded from the MSS report:

Item No.	Submetric	
636	P-4A Average Order Completion and Completion Notice Interval (AOCCNI) Distribution Non-Dispatch	>= 10 – 2 w Analog Loop w/NP Non-Design
638	P-4A Average Order Completion and Completion Notice Interval (AOCCNI) Distribution Non-Dispatch	>= 10 – 2 w Analog Loop w/NP Non-Design
639	P-4A Average Order Completion and Completion Notice Interval (AOCCNI) Distribution Non-Dispatch	>= 10 – 2 w Analog Loop Non-Design
650	P-4A Average Order Completion and Completion Notice Interval (AOCCNI) Distribution Non-Dispatch	<= 10 – UNE Combo Other
681	P-4A Average Order Completion and Completion Notice Interval (AOCCNI) Distribution Non-Dispatch	< 10 – UNE Combo Other
692	P-4A Average Order Completion and Completion Notice Interval (AOCCNI) Distribution Non-Dispatch	< 10 – UNE xDSL (ADSL, HDSL, UCL) with conditioning
693	P-4A Average Order Completion and Completion Notice Interval (AOCCNI) Distribution Non-Dispatch	< 10 – UNE xDSL (ADSL, HDSL, UCL) w/o conditioning

53. Similarly, in the Florida SEEM measure O-2 (Speed of Answer in Order Center) is disaggregated by residence and business. In contrast, the MSS report combines business and residential orders for this measure.

54. As a consequence, because BellSouth appears to rely on the MSS report as the basis for reposting and SEEM recalculations, BellSouth's revised reposting policy will not trigger the reposting of these sub-metrics and the recalculation of SEEM results.

### **CONCLUSION**

On the basis of the current record, BellSouth cannot legitimately contend that its data are accurate, reliable and trustworthy. BellSouth's reposting policy that was in effect during the time that BellSouth generated the performance results on which BellSouth relies for 271 approval demonstrates that BellSouth has unilaterally chosen not to report errors in its data for numerous measures. BellSouth's revised reposting policy is equally defective. And neither the BearingPoint audit nor BellSouth's initial and revised data notification processes can possibly serve as an appropriate substitute for actual, restated performance results which correct errors in BellSouth's data.

BellSouth cannot have it both ways. BellSouth cannot unequivocally assert that the performance data are accurate and trustworthy, while simultaneously shielding errors in its data based upon an ill-conceived, unilaterally-implemented reposting policy. Since BellSouth is relying on the performance data in its Application to prove checklist compliance, it should also divulge to this Commission and the CLECs all errors in the performance results on which it

**JOINT SUPPLEMENTAL DECLARATION OF  
CHERYL BURSH, SHARON E. NORRIS AND ROBERT M. BELL  
WC DOCKET NO. 02-307**

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relies. Until BellSouth does so, it cannot reasonably contend that its data are accurate and fully satisfy the checklist.