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August 6, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Presentation
Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 01-321
Non-Accounting Safeguards of Sections 271 and 272, CC Docket No. 96-149
Accounting Safeguards under the Telecommunications Act, CC Docket No. 96-150
Section 272(f)(1) Sunset of BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112
BellSouth Section 272 Audit, EB Docket No. 03-197
Qwest Section 272 Audit, EB Docket 03-198
SBC Section 272 Audit, EB Docket No. 03-199
Verizon Section 272 Audit, EB Docket No. 03-200

Dear Ms. Dortch:

On June 28, 2004 the Joint Competitive Industry Group ("JCIG") filed a letter along with a copy of a written *ex parte* presentation ("JCIG Letter"). In substantial part, the presentation by JCIG duplicates comments provided by AT&T in a letter dated June 7, 2004 ("AT&T Letter"). BellSouth filed a response to AT&T's letter on July 9, 2004 ("BellSouth Letter"). BellSouth files this letter to respond to the aspects of the JCIG *ex parte* that go beyond the scope of the previous AT&T letter.

JCIG takes a two-pronged approach in its letter and presentation. First, JCIG states its general criticism of the plans proposed in this matter by BellSouth and the other BOCs. JCIG then provides more specific metric-by-metric complaints about the proposals of each BOC. Both types of criticism largely reflect an attempt by JCIG to misuse special access measurements as a means to extract from the BOCs, at no charge, certain items that would otherwise be included in the negotiated contracts for access services, such as enhanced service level guarantees, penalty payments and detailed carrier-specific data reports, and other items that BellSouth would not be

able to cost effectively provide (e.g., shorter intervals and service levels that are dramatically higher than the marketplace warrants). In support of this effort, the JCIG Letter provides flawed logic, careful representations that fail to tell the entire story, and in some cases, blatant misstatements. In order to provide the Commission with accurate information, BellSouth will respond to both the general overarching criticism by JCIG and the more specific complaints in the JCIG Letter.

Before addressing the substance of the BOC plans, JCIG makes an initial attempt to "poison the well" by making the inaccurate claim that BellSouth's current proposal "represents a retreat from the metrics it filed in August 2002 as part of its agreement with Time Warner Telecom ('TWCT'), and is even a step back from the proposed measures that BellSouth filed as recently as November 2003." (JCIG Letter at 2). As to the first claim, The Time Warner/BellSouth metrics are not relevant to this proceeding because the joint proposal of BellSouth and Time Warner was part of a comprehensive, negotiated proposal to resolve the issue in Dockets 01-321 and 01-338[1] that involved both special access measurements and certain agreed-upon UNE relief.[2] BellSouth's current proposal is more narrowly focused on metrics to address specific 272 issues. Moreover, the joint proposal of BellSouth and Time Warner advocated the sunset or removal of certain UNEs as an integral part of the agreement. Given this, it is wrong for JCIG to accuse BellSouth of a "retreat" from the joint proposal with Time Warner because BellSouth declines to offer on a stand-alone basis only the aspects of this proposal that would benefit JCIG.

JCIG's portrayal of BellSouth's current proposal as a retreat from its proposal in November of 2003 is also inaccurate. The measurements that BellSouth proposed in November 2003 are fundamentally the same as the measurements that BellSouth now proposes. It is true that in some regards proposed business rules have changed. However, BellSouth has also proposed to increase the information provided under the plan. Also, BellSouth has added measurements or changed measurement definitions in response to legitimate criticism regarding its proposal.[3] It is noteworthy that JCIG makes no attempt to compare the actual substance of what was proposed by BellSouth in November to the current proposal, and to track precisely what has changed. Doing so would belie JCIG's contention that BellSouth's current proposal constitutes a retreat from its previous proposal.

Finally, JCIG identifies two states in BellSouth's nine state region that have adopted the JCIG measures. It is noteworthy, however, that the states identified as adopting JCIG did so in a much different context from the present one. In the state performance measures proceedings,

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1 *Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338.

2 *See* Letter from William W. Jordan, Vice President-Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, and attached *ex parte* presentation (dated Aug. 26, 2002).

3 As discussed below, BellSouth has offered to utilize the 30 day interval advocated by JCIG for the New Installation Trouble Report Rate metric rather than the five day interval originally proposed by BellSouth.

BellSouth opposed the adoption of any special access measures because State Commissions lack jurisdiction to measure (or to regulate in any fashion) services that are interstate in nature. In several of the states, the JCIG plan was nevertheless adopted. However, the decisions of the State Commissions that adopted the JCIG plan do not represent a choice of the JCIG proposal over the BellSouth proposal because, for the reasons described above, BellSouth did not make a proposal in those proceedings. In contrast, this Commission has the opportunity to compare BellSouth's proposal with the burdensome, costly, and largely unnecessary alternative proposed by JCIG, and make the correct decision that the BellSouth plan is the better of the two.

JCIG's General Critique

JCIG next presents a general critique of the proposals of BellSouth and other BOCs that addresses what it contends are deficiencies in the areas of standards, reporting, and enforcement. JCIG also provides general criticism of the BOC measurement structures. In each instance, JCIG's analysis is badly flawed.

JCIG's objection to the standards in the BOC proposals entails little more than the blanket allegation that the BOC proposals do not have "meaningful standards." JCIG goes on to argue briefly that the only meaningful standards would be objective standards, as opposed to the parity standards that "ensure only that BOC retail customers and wholesale competitors receive the same performance, even if that performance is completely unacceptable." (JCIG Letter at 3, emphasis added). JCIG's approach is inappropriate because it would require one to completely ignore the purposes of the numerous proceedings in which these measurements would be used, the context of these proceedings, and the fact that the Commission has repeatedly stated that a parity standard should be used in this context.

A parity standard is the only appropriate standard because it is the standard mandated by Sections 251 and 272. BellSouth has proposed (and JCIG apparently does not object to) the use of these measurements in four separate dockets.[4] Three of these four dockets are direct outgrowths of the 1996 Act, and its requirement that all BOCs provide nondiscriminatory access to competitive carriers. When the Commission first determined how to apply this requirement in the *Local Competition Order*[5] almost eight years ago, it clearly stated that a parity standard must be used to determine whether prohibited discrimination exists:

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[4] *Implementation of the Non-Accounting Safeguards of the Telecommunications Act of 1934, as Amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket No. 96-149; *Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321; *Section 272(f)(1) Sunset of BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112; *BellSouth Section 272 Joint Federal/State Biennial Audits*, EB Docket No. 03-197.

[5] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket Nos. 96-98 & 95-185, *First Report and Order,* 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

> We believe that the term "nondiscriminatory," as used throughout section 251, applies to the terms and conditions an incumbent LEC imposes on third parties as well as on itself. In any event, by providing interconnection to a competitor in a manner less efficient than an incumbent LEC provides itself, the incumbent LEC violates the duty to be "just" and "reasonable" under section 251(c)(2)(D).[6]

In the eight years since the issuance of the *Local Competition Order*, the Commission has never wavered from the use of this parity standard, nor has it ever used objective standards without regard to parity, as JCIG advocates.

Further, in the docket that addresses special access measures specifically (i.e., the only pertinent proceeding that is not a direct outgrowth of the 1996 Act) the Commission issued a *Notice of Proposed Rulemaking* in which it addressed specifically the relationship of the requirement of sections 201 and 202 to provide just and reasonable service to the requirements of section 252:

> . . . [I]n the *Local Competition Order* the Commission noted that the nondiscrimination requirement in section 251(c)(2) is not qualified by the "unjust or unreasonable" language of section 202(a), and therefore concluded that congress intended the term "nondiscriminatory" in section 251 to signify a more stringent standard than the phrase "unjust and unreasonable discrimination" in section 202 of the 1934 Act. Given this, the Commission interpreted section 251's nondiscrimination requirement to require parity of performance between an incumbent LEC and its competitors.[7]

Thus, the Commission noted its earlier decision that the parity standard required under Section 251 is <u>higher</u> than the pre-existing "just and reasonable" standard under section 202.

Also, as noted in the *NPRM*, "Section 272(e)(1) provides additional authority for the Commission to apply measures, standards, and reporting requirements to the provisioning of interstate special access services by BOCs."[8] The *NPRM* then noted that Section 272(e) requires the BOC to provide access service "within a period no longer than the period in which it provides such telephone exchange service and exchange access <u>to itself or to its affiliates</u>."[9] In other words, Section 272 also applies a parity standard to the provision of access services.

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6 *Id.* at 15612, ¶ 218.

7 *Performance Measurements and Standards for Interstate Special Access Services, et al.*, CC Docket No. 01-321, *et al.*, *Notice of Proposed Rulemaking,* 16 FCC Rcd 20896, 20901, ¶ 9 (2001) ("*NPRM*"), citing *Local Competition Order,* 11 FCC Rcd at 15612, ¶ 217.

8 *Id.* at 20901, ¶ 10.

9 *Id.* n.23 (emphasis added).

Despite this, JCIG claims that "[o]bjective standards are needed to ensure that all customers, including retail end users, are provided special access services in a just and reasonable manner, as required by section 201 of the Communications Act." (JCIG Letter at 3). The just and reasonable standard of section 201 is, of course, precisely the same as the "just and reasonable" standard of section 202. Thus, without the benefit of any legal support, JCIG claims that the just and reasonable standard (that has been determined by the Commission to require a lower standard than the 251 parity standard) can only be met by setting objective standards that are higher than those required by Section 251.[10]

Moreover, JCIG argues for measurements to be used to provide service levels that generally exceed the service levels that the marketplace is demanding and is willing to pay for. Customers of special access services always have the option of purchasing generally available tariffed services. Also, BellSouth has negotiated and entered into numerous pricing flexibility contract tariffs with special access customers. These agreements contain specific negotiated service levels and provide, at the customer's option, a customized set of reports that are created to meet the specific needs of the customer. BellSouth also provides its special access customer with a service installation guarantee, and a service assurance warranty that provide for financial consequences if the service fails to meet the contracted standard. The JCIG proposal bypasses these contractual arrangements entirely, which is grossly inappropriate in a competitive market such as the market for special access services.

The market for special access services has been open for many years, and the Commission has adopted a number of long standing policies to facilitate competition in this market.[11] Given this, customers have the option of purchasing special access services from BellSouth or purchasing those services from alternative transport providers. Accordingly, the market should set the rate for any enhanced level of service, and additional services, beyond BellSouth's standard offering. If, as JCIG proposes, BOCs are forced to absorb the cost of enhancements to service offerings without being able to reflect the cost of these enhancements in the tariff prices for these services, then it appears obvious that alternative providers of access service would be unable to compete, i.e., they would be unable to meet these artificially low prices and also provide a comparable level of service. Thus, one result of the JCIG proposal would be to ensure that the BOC's historical competitors to provide this service are effectively barred from future competition. There is simply no reason in a competitive market to take the action JCIG urges.

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[10] JCIG also contends in passing that there are measurements for which no retail analog exists and that low order volume may, in some cases, make parity comparisons difficult. (JCIG Letter at 3, n.8). JCIG's first contention is incorrect. All of the standards proposed by BellSouth are retail analogs. As to the low volume issue, any isolated instances of low order volume can be remedied by combining the results from two or more months.

[11] *See, e.g., Expanded Interconnection with Local Telephone Company Facilities; Amendment of the Part 69 Allocation of General Support Facility Costs*, CC Docket Nos. 91-141 & 92-222, *Report and Order and Notice of Proposed Rulemaking*, 7 FCC Rcd 7369 (1992).

JCIG's proposal regarding reporting is the product of the same fundamental approach. Again, BellSouth already provides under negotiated contracts with access customers, reports of specific performance results. The reports can be customized according to the requests of the customer, and they are covered under the contract for access services. This individualized reporting includes the type of customer specific data that JCIG contends should be provided through its measurement plan.

Moreover, there is simply no legitimate reason to mandate provision of disaggregated data in the way JCIG proposes in order to monitor performance. The parity assessment required by Section 272 must be based upon a comparison of the performance that BellSouth provides to itself and to its affiliates to that which it provides to non-affiliates at an aggregate level, and, indeed, this is the only data JCIG proposes to be publicly reported. (JCIG Letter at 4)

JCIG also contends in its letter that "the filings that BellSouth has made in compliance with state orders adopting the JCIG metrics have put to rest any doubts about the BOCs' ability to collect the performance information sought by JCIG in this proceeding." (*Id.*) JCIG is right in the contention that reporting the information it requests is not impossible. Nonetheless, the JCIG approach, while possible, is costly, burdensome, unfair, and as explained above, ultimately anticompetitive.

Finally, JCIG contends that enforcement mechanisms must be place in order for the measurements to be meaningful. Although JCIG is unclear in its letter as to what it currently proposes in this regard, BellSouth would note that no additional enforcement mechanism is needed beyond what the Commission already has at its disposal. Section 208[12] provides a mechanism for the filing of a complaint, including a complaint that a BOC has failed to meet its obligations under the Act to provide access services. BellSouth's proposal includes the provision of metric reports that contain the data that an "aggrieved" carrier would need to make a Section 208 complaint. Beyond this, no other enforcement mechanism is required.

Finally, as previously discussed, BellSouth's special access offering already includes tariffed protection guarantees for both service installation and general service quality.[13] Under these guarantees, if BellSouth fails to provide timely installation, or if the service fails to meet specified maintenance standards, credits are provided to the customer. Thus, the JCIG proposal, even if it were legally viable, would require the addition of a duplicate "penalty" to the service guarantee credits that are already available.

Measurements

As to measurements, JCIG makes several general complaints before moving to more specific criticism of a number of particular aspects of the plans of BellSouth and other BOCS. In general, JCIG begins by making the broad claim that the BOC plans do not contain adequate

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12 47 U.S.C. § 208.

13 BellSouth Tariff F.C.C. No. 1, §§ 2.4.9, 2.4.4.

information about "performance failures" and that they lack clear and meaningful business rules.[14]

JCIG first contends that "[t]he measurements proposed by the BOCs focus only on the 'good news', *i.e.*, those instances in which a BOC's performance meets expectations." (JCIG Letter at 5) A more accurate statement would be that BellSouth's proposal includes adequate information as to the "good news" and the "bad news," but does not include superfluous information regarding the extent of either. In other words, the measurements are designed to determine whether BellSouth's performance meets the parity standards. If BellSouth's performance fails to meet the parity standard in any regard, then there is a performance failure. If BellSouth meets or exceeds the applicable parity standard, its performance is acceptable. There is really no point in attempting to quantify whether a particular failure is by four days, by five days, or more. Further, if there is a particular systematic failure, this failure would be detected by BellSouth's measurements system, and a root cause analysis would be performed to identify and address any chronic problem.

JCIG next contends that the BOCs' proposals contain a "lack of clear and meaningful business rules." (JCIG Letter at 6) As an example, JCIG notes that BellSouth's proposal would exclude for numerous measures "carrier caused or end user misses." (*Id.*) JCIG then goes on to note that the JCIG-proposed definition is similar to BellSouth's, but that the JCIG approach would exclude a CNR ("customer not ready") situation "only if the incumbent LEC has notified the ordering carrier of a CNR situation and allowed the carrier a reasonable period of time to correct the situation." (*Id.* n.20) Contrary to JCIG's assertion, it is the JCIG proposal that is unclear, and unreasonable as well.

Installations that relate to access services are generally ordered by the carrier on behalf of the carrier's end user/customer. For example, a CNR situation would occur when a BellSouth technician arrives at the end user's premises and finds that the equipment room to which he must gain access to perform the necessary installation is locked. In this situation, BellSouth's proposed measurement would exclude this "missed" appointment. BellSouth clearly cannot perform the installation in this situation, and the reason that it cannot perform the installation is in no way attributable to BellSouth.

In contrast, under JCIG's proposal, this situation would constitute a failed installation attempt by BellSouth, unless BellSouth gives the carrier notice and a "reasonable opportunity" to correct the situation. In this particular example, this would presumably mean that the BellSouth technician would be required to notify the carrier that BellSouth did not have access to the premises and then wait for some undefined period of time (i.e., whatever is "reasonable") before BellSouth would be excused from "failing" to perform the installation. JCIG provides no explanation of what constitutes the "reasonable" amount of time that the BellSouth technician must wait before BellSouth can be "excused" for a situation that it had no part in creating.

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[14] Again, some of these issues were previously raised by AT&T in its letter of June 7, 2004 and to the extent that BellSouth has already responded to these issues, it will not repeat its prior responses.

BellSouth would note, however, that its technicians are motivated to complete the installation work upon the initial installation appointment and will accept minor delays, since installation completion is one measure of technician productivity. JCIG's implication that BellSouth arbitrarily applies the CNR exception is not correct.

Next, JCIG argues that because ARMIS data reflects BellSouth's high level of installation performance, BellSouth must have manipulated the data. JCIG notes that according to 2003 ARMIS data, almost every one of the installation appointments BellSouth missed was due to CNR-type situations. JCIG, however, does nothing to impeach the validity of the data BellSouth reported, or to support a claim that it is not accurate. Instead, it simply notes the data and jumps to the unfounded conclusion that, since BellSouth's performance is good, the data that validates this performance must be false.

As to JCIG's metric-by-metric analysis, BellSouth responds as follows:

Ordering: The first concern noted by JCIG focuses primarily on ASRs for which an FOC is provided, but not in the month covered by the particular report. BellSouth has already responded to a similar concern raised by AT&T by noting that the theoretical problems that might arise in this situation are highly unlikely. Nevertheless, if the Commission is concerned about the remote possibility of these problems, then, as noted in its response to AT&T, BellSouth would be willing to amend its FOCT-2 measurement to include all ASRs received during the reporting period, even if the FOC is issued in a subsequent month.[15]

Concerning the "quality of the ordering process," JCIG complains that BellSouth's measurement does not compare "how the installation date offered by the BOC compares to the date requested by the special access customer." (JCIG letter, p. 9). BellSouth has already provided information in response to AT&T's letter that addresses this concern.

As to JCIG's complaint concerning BellSouth's exclusion of "projects," BellSouth's definition of what constitutes a project is quite clear. Specifically, a project is defined as a service request that exceeds "the line size and/or level of complexity that would allow the use of standard ordering and provisioning processes."[16] In many instances, project numbers are assigned to orders because the non-affiliated carrier specifically requests this assignment. In other instances, this categorization is made by BellSouth, but the criteria for doing so is clear. When an order is received, it can be provisioned by the use of standard processes, or it cannot. If it cannot, then it requires special handling and is designated as a project. The distinction

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[15] Concerning the "quality of the ordering process," JCIG complains that BellSouth's measurement does not compare "how the installation date offered by the BOC compares to the date requested by the special access customer." (JCIG Letter at 9) BellSouth has already provided information in response to AT&T's letter that addresses this concern.

[16] BellSouth Service Quality Measurement Plan (SQM) ("BellSouth SQM Plan") at 11, transmitted by letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, BellSouth, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 01-112, 01-321 and 03-197, CC Docket No. 96-149 (May 11, 2004).

between what requires project status and what does not is very clear and relies on little more than comparing the specific carrier request to the standard processes for fulfilling carrier requests.[17]

Further, JCIG's professed concern that a BOC could "avoid reporting on poor performance regarding a particular order by re-defining the order as a 'project' (JCIG Letter at 9, emphasis added) is misplaced. An order is defined as a project when it is first received. The process is not designed to accommodate reclassifications of orders to project status at a later time.

As to "facilities checks," JCIG is simply mistaken as to the way BellSouth's plan currently functions. The JCIG letter states that "[a]lthough BellSouth's November 2003 proposal included a commitment to conduct a facilities check before issuing a FOC, its latest proposal includes no such commitment." (JCIG Letter at 9) To the contrary, BellSouth's operational process included a facilities check in November of 2003 and that facilities check is still included. However, the specific measurement plan reference to the facilities check was deleted from BellSouth's plan documentation because the reference really does not belong in the description of the measurement. In other words, the measurement addresses the interval from the time the order is received until an FOC is returned. The measurement does not delineate every operational step that takes place in the process that occurs during this interval. Consistent with this general approach, the reference to one of these operational steps, the facilities check, has been deleted. The facilities check, however, is still performed.

As to disconnect orders, JCIG contends that BellSouth should not include in its FOC measurement "disconnect ASRs," because disconnections are simple to perform, and the inclusion in the measurement of these ASRs will simply pad BellSouth's results. This contention is wrong for two reasons. One, a disconnect service order is not always simple. BellSouth has proposed to measure both special access and switched access circuits. The disconnection of a switched access circuit is not simple in that it generally involves the disconnection of particular circuits in a relatively large trunk group. To identify the particular circuits to disconnect and to perform the disconnection can, in some instances, be a very time consuming task. Thus, JCIG's across-the-board statement that disconnections are always simple is not accurate.

Two, BellSouth has proposed a parity standard for this measurement. This necessarily means that any improvement in reported performance that results from the inclusion of disconnect ASRs will apply equally to the service provided to BellSouth and its affiliates and to non-affiliated carriers. Given this, JCIG's contention that the inclusion of these disconnections will artificially inflate BellSouth's results is incorrect.

Provisioning: JCIG first contends that there is a problem with BellSouth's business rules. This contention, however, relies principally upon a rehash of JCIG's argument against the exclusion of "carrier caused or end-user misses," which BellSouth has responded to previously at some length.

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[17] Moreover, the criteria for this categorization is available on BellSouth's interconnection website.

JCIG next complains that BellSouth's proposal is missing certain measurements. JCIG identifies three measurements that it contends should be included. First, JCIG complains that BellSouth's measurements do not capture installations that are not completed by the due date and that are never subsequently completed. (JCIG Letter at 11) While the prospect of a tardy installation is strong enough to justify monitoring the timeliness of installations, there is no basis to assume that there will be a substantial number of installations that are never completed. Given the fact that each BOC provisions access service in exchange for payment, it seems extremely unlikely that any BOC would elect to simply never complete certain orders. Also, this is not, nor has it ever been, an issue in BellSouth's region. Since JCIG has offered nothing to suggest that this intuitively remote contingency would actually be a problem, there is no need for JCIG's proposed measure.

JCIG's second point is that BellSouth has not offered a measure to compare requested intervals to completed intervals. BellSouth has previously addressed this point in response to AT&T's letter. JCIG's third complaint is that BellSouth has not provided a measure of the number of circuits for "which the installation date has passed and the work has not been completed." (*Id.*) To the contrary, BellSouth's PIAM2 measurement is based upon the number of appointments that are made. Comparing the number of appointments that are made to the total number of installation requests allows one to readily determine how many appointments have been missed. Further, the JCIG-proposed measurement would only provide a "snapshot" at the end of any given month to show how many of the orders that are pending at that time are late. Obtaining this information for a particular day that happens to be at the end of the month does not add any particularly useful information to the measurement plan.

Finally, JCIG contends that BellSouth's measurement plan does not capture all relevant troubles. (*Id.*) JCIG then embarks on a lengthy discussion as to why it believes that it is more appropriate to consider installation troubles within a 30 day period after installation than a five day period. As BellSouth stated in response to the AT&T letter, it will agree to the 30 day interval. JCIG also complains about the way in which BellSouth's measurement plan addresses repeat troubles. This complaint is repeated later in the JCIG letter under the heading for "Maintenance and Repair." BellSouth will respond to this contention below when it addresses that portion of the JCIG letter.

Maintenance and Repair: JCIG contends that BellSouth's CTRR2 and MAD2 measurements inappropriately exclude "troubles outside BellSouth's control." Specifically, JCIG contends that this exclusion has been defined so vaguely that it would be "difficult to predict all of the situations that might fall under the category of 'troubles outside BellSouth's control'." (JCIG Letter at) To the contrary, as BellSouth stated in response to the AT&T letter, this exclusion is intended to be relatively narrow and to cover only situations that are obviously outside of BellSouth's control, *e.g.*, natural disasters. BellSouth did not define this term specifically in its plan because it did not seem productive to identify in the measurement every single situation that common sense would dictate to be "outside of BellSouth's control." If it would address JCIG's concern, however, BellSouth would be willing to provide additional

language to clarify that the exclusion does, in fact, apply to situations (such as natural disasters) that are clearly outside of BellSouth's control.[18]

JCIG also expresses a concern that the "troubles outside of BellSouth's control" exclusion could be applied to exclude trouble tickets when no trouble is found ("NTF") or when the line tests ok ("TOK"). These two situations are not excluded by application of the "troubles outside of BellSouth's control" exclusion. However, as explained in response to AT&T's letter, these two situations are excluded as a result of the exclusion of all trouble reports that do not require physical repair work. (BellSouth Letter at 12) As BellSouth explained in its response to AT&T, the purpose of the measurement is to assess BellSouth's performance in repairing actual troubles. If a trouble is reported, but subsequent testing or on-site inspection proves the report to be false, then there is no reason to include this report.

Finally, JCIG raises again its complaint about the way in which BellSouth's measurements address repeat troubles. BellSouth has already addressed this issue in response to AT&T.[19] Also, it is certainly possible that, in a broader sense, the JCIG measurement could function to penalize improved performance. The JCIG measurement is essentially repeat troubles divided by total troubles. It is important to note that the denominator here, troubles, is a key measurement of network reliability. To the extent the network is more reliable, less troubles are reported. As a result, the JCIG measurement of repeat troubles may increase, even though the overall performance of the network is more reliable. As an example, assume there are 100 troubles and 5 repeats—for a repeat report rate of 5%. Assume that in another month, there are 50 troubles and 5 repeats. The resulting repeat report rate is doubled to 10% even though there are only half as many troubles.

JCIG's allegation that the BellSouth proposal does not assess repeat troubles is also inaccurate. Repeat troubles are, in fact, included in two measurements proposed by BellSouth; CTRR2 (Failure Rate) and MAD2 (Average Repair Interval). CTRR2 captures the entire network trouble report rate. This includes troubles from new installations and repeat reports. A repeat report measurement is nothing more than a disaggregation, or subset, of the CTRR2 measurement. Therefore, inclusion of a repeat report measurement would result in the double counting of the repeat trouble (once in CTRR2 and again in JCIG's proposed repeat trouble measure) and could result in attributing to the BOC two failures as a result of a single event.

BellSouth's metric CTRR2 is defined as capturing the "percentage of initial and <u>repeated</u> circuit specific trouble reports completed per 100 in-service circuits for the reporting period."[20] JCIG claims that this measurement is inadequate because it "fails to capture and isolate the magnitude of chronic problems." (JCIG Letter at 15) JCIG's notion that this omission constitutes a failure to focus on "chronic problems" is wrong. A chronic problem would automatically be captured, by definition, in the CTRR2 measurement. A large number of repeat

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18 Of course, even with the additional information, the definition would still not identify every possible situation that would be appropriately excluded.

19 *See* discussion of JCIG measurement in BellSouth's Letter at 11-12.

20 BellSouth SQM Plan at 7 (emphasis added).

reports would cause a failure in this measure, and this would prompt a root cause analysis under BellSouth's plan that would determine the nature of the problem. This is an appropriate way to address chronic maintenance problems.

Finally, reviewing the merits of the respective proposals, it is clear that BellSouth has proposed a balanced plan that is sufficient to detect discrimination, but not unduly costly or burdensome. In contrast, the JCIG proposal would be costly to implement, would cause substantial administrative burdens for both the BOCs and the Commission, and would generate a surplus of information that is not needed to assess BOC performance. Also, the BellSouth proposal has the advantage of both addressing issues raised in multiple dockets and assisting the Commission in meeting the requirements of § 272(e)(1). Given the choice between these two alternatives, the BellSouth proposal is by far the better.

Respectfully submitted,

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