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BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

RECORDS AND REPORTING

In re:)
Investigation into the Establishment of)
Operations Support Systems Permanent)
Performance Measures for Incumbent Local)
Exchange Telecommunications Companies)

Docket No. 000121-TP

Filed: April 6, 2000

COMMENTS OF COVAD COMMUNICATIONS COMPANY IN RESPONSE TO QUESTIONS POSED BY THE FLORIDA PUBLIC SERVICE COMMISSION AT A WORKSHOP ON PERFORMANCE MEASURES FOR INCUMBENT LOCAL EXCHANGE TELECOMMUNICATIONS COMPANIES

Comes Now, DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), and makes these comments in response to the questions issued by the Florida Public Service Commission on March 9, 2000. Covad respectfully requests that the Commission and its staff give consideration to the following information.

A. Authority to Establish Permanent Performance Measures

The Florida Public Service Commission has clear legal authority to set the performance standards which govern the level of service that incumbent local exchange carriers ("ILECs") provide. Inherent in the authority to establish such performance measures is the authority to require reports on those standards on a monthly or quarterly basis. This Commission's authority flows from numerous places.

First, in its enabling statute, the Florida Public Service Commission is charged to "Protect the public health, safety and welfare by insuring that monopoly services provided by telecommunications companies continue to be subject to effect price, rate and service regulation." [Chapter 364.01(4)(c), Florida Statutes.] Furthermore, in setting forth the powers of the Florida Public Service Commission, the Legislature found that "the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and to provide for the development of fair

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and effective competition . . .” [Id. at 364.01(3)] Both the words and the intent of this statute enable the Florida Public Service Commission to exercise its authority and jurisdiction in this area to establish permanent performance measures. These performance measures will further competition, ensure quality service, and effectively drive process improvements to deliver improved telecommunications service throughout Florida.

Furthermore, the Telecommunications Act of 1996 clearly contemplates the continuing roll of state public service commissions in monitoring the implementation of the competitive telecommunications environment pursuant to the Act. In fact, the Act specifically states the following:

PRESERVATION OF AUTHORITY – Notwithstanding paragraph (2), but subject to Section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

[47 U.S.C. § 252(e)(3)]

Moreover, the FCC routinely recognizes and applauds the implementation by states of performance measurements for the purpose of evaluating the state of competition in those states. For example, in its evaluation of Bell Atlantic-New York’s application to enter the long distance market, the FCC recognized that the New York Public Service Commission (“New York Commission”) had ordered Bell Atlantic to report performance data, on a monthly basis, pursuant to a series of 152 measurements or metrics. These measurements were developed through a collaborative proceeding before the New York Commission and covered all of Bell Atlantic’s performance on key functions essential to “open, competitive local market: pre-ordering, ordering, provisioning, maintenance and repair, network performance (interconnection trunks), collocation, billing, and operator services.” [In the matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region Interlata Service in the State of New York, CC Docket Number 99-295, FCC 99-404

(adopted December 21, 1999, released December 22, 1999), ¶ 431]. Furthermore, the New York Commission ordered Bell Atlantic-New York to comply with an enforcement plan that established an automatic process under which effective competitors could receive benefits if predetermined performance standards were not met. In paragraph 429 of the Order, the FCC states that it would consider in 271 approval whether a BOC would be subject to performance monitoring and enforcement mechanisms on a state level. [Id. at 429] This clearly provides the FCC's guidance that states are not only authorized but encouraged to establish permanent performance measurements and to routinely monitor performance of ILECs active in their states.

In conclusion, this Commission has the authority, both under state and federal law, to establish permanent performance standards that dictate the level of service that ILECs provide through operations support systems. Furthermore, this Commission has the authority to require ILECs to report results as frequently as the Commission wishes. Inherent in that authority is the power to assess penalties for non-compliance with performance standards. Covad strongly urges this Commission to instigate self-effecting remedies which would relieve the ALECs from having to file complaints on every specific issue and would further provide ALECs with immediate compensation as a result of poor ILEC performance. This Commission should establish either rules or guidelines by order which set forth the expected performance, the penalty for non-performance, and the method of reporting.

B. Administrative Matters and Establishment of Standards

This Commission should be able, through a series of collaborative workshops and meetings among Commission staff, ALECs and ILECs to establish performance measures. This process is currently ongoing in the BellSouth region in Louisiana and North Carolina. Ultimately, a hearing would likely be necessary to make final determinations about certain levels of required performance, as well as a mechanism for effecting automatic remedies for ALECs harmed by non-performance. Nonetheless, through a collaborative process, it is likely that parties could resolve a number of issues before a hearing, leaving a more narrow scope for the Commission to address in a formal hearing process.

Covad believes that this Commission should set performance standards that apply to an ILECs aggregate level of performance across all ALECs and by individual ALECs. This level of disaggregation is necessary to prevent ILECs from hiding discrimination against one particular ALEC as well as to provide ALECs with specific information about whether the ILECs performance is better or worse than an average treatment for ALECs. Covad further believes that performance on delivering UNEs should be considered by UNE, or at least, by type of UNE (i.e. xDSL loops). Covad has experienced difficulty in obtaining timely loop delivery on all xDSL loops ordered from ILECs in Florida. If these orders are combined with other types of UNEs, which the ILECs may provision in a more timely manner, it is less clear where the focus of this Commission and of the ILECs should be. The purpose of reporting performance is to seek ways to improve performance. Covad is in the business of installing and providing DSL services. If Covad could elicit from the ILECs in Florida treatment that a normal supplier would provide to a normal customer, Covad would not need performance measurements. Nonetheless, since ILECs continue to treat ALECs as competitors rather than customers, performance measurements are necessary to stem discrimination and to target areas for needed improvement.

C. Monitoring and Penalties

This Commission should review ILEC performance on a monthly basis, at least in the initial phases. As mentioned above, Covad hopes that a business relationship can be established between ALECs and ILECs, such that someday no routine monitoring by the Commission is necessary. Until that time, however, Covad believes monthly monitoring is necessary. This Commission should strive for periodic performance reports from an ILEC that are simple and easy to read, and that present clear, specific, intelligible data on performance that is easily evaluated by ALECs. Each measure should be treated individually as a test of performance. From an ALEC perspective, each aspect of performance measured is critical to the ALECs success in the marketplace. For example, if an ILEC performed well in pre-ordering functions, but failed to timely provision lines, Covad's overall performance to its customers suffers. Therefore, each aspect of ILEC performance should be measured and each measurement should

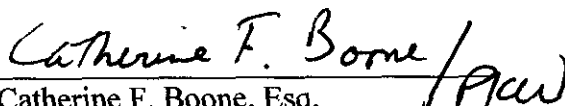
have its own standards for passage and failure.

Just as business parties in commercial relationships establish liquidated damages for non-performance, so should this Commission order automatic penalties for non-performance in permanent performance measurements. When independent business parties agree that damages will be difficult to quantify and that timely performance is a critical part of a contract, a liquidated damages provision is often inserted into a contract. For example, in a construction contract, a contractor may be assessed a liquidated damage for every day beyond the completion date it takes to complete a building project. This sort of automatic remedy both prevents litigation and provides incentives for parties to adhere to timely completion dates. Currently, the ILECs have no financial incentive to perform on time. By penalizing non-performance, this Commission could establish financial incentives that favor on-time performance. On-time performance ultimately improves competition and delivers greater consumer satisfaction.

Covad looks forward to working with the Commission to establish permanent performance measurements that will ensure competition in advanced services in Florida.

Dated: April 6, 2000

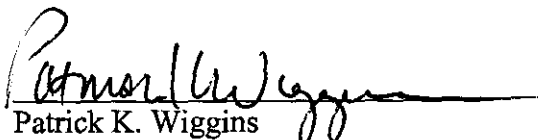
Respectfully submitted,


Catherine F. Boone, Esq.
Covad Communications Company
10 Glenlake Parkway, Suite 650
Atlanta, Georgia 30328

CERTIFICATE OF SERVICE

I do hereby certify that I have this 6th day of April, 2000 served counsel with **COMMENTS OF COVAD COMMUNICATIONS COMPANY IN RESPONSE TO QUESTIONS POSED BY THE FLORIDA PUBLIC SERVICE COMMISSION AT A WORKSHOP ON PERFORMANCE MEASURES FOR INCUMBENT LOCAL EXCHANGE TELECOMMUNICATIONS COMPANIES** by depositing a copy of same in the United States Mail first class postage prepare, and addressed as follows:

Marsha Rule AT&T 101 North Monroe Street, Suite 700 Tallahassee, FL 32301-1549	Nancy B. White c/o Nancy H. Sims BellSouth Telecommunications, Inc. 150 South Monroe Street, Suite 400 Tallahassee, FL 32301-1556
Michael A. Gross Florida Cable Telecommunications Assoc. Inc. 310 North Monroe Street Tallahassee, FL 32301	Angela Green Florida Public Telecommunications Assoc. 125 S. Gadsden St., # 200 Tallahassee, FL 32301-1525
Kimberly Caswell GTE Florida Incorporated P.O. Box 110, FLTC0007 Tampa, FL 33601-0110	Scott Sapperstein Intermedia Communications, Inc. 3625 Queen Palm Drive Tampa, FL 33619-1309
Nanette Edwards ITC^Deltacom 4092 South Memorial Parkway Huntsville, AL 35802	Donna C. McNulty MCI WorldCom 325 John Knox Road, Suite 105 Tallahassee, FL 32303-4131
Laura L. Gallagher MediaOne Florida Telecommunications, Inc. 101 E. College Avenue, Suite 302 Tallahassee, FL 32301	Floyd Self Messer Law Firm P.O. Box 1876 Tallahassee, FL 32302
Peter Dunbar Karen Camechis Pennington Law Firm P.O. Box 10095 Tallahassee, FL 32302-2095	Kenneth Hoffman John Ellis Rutledge Law Firm P.O. Box 551 Tallahassee, FL 32302-0551
Doris M. Franklin Supra Telecom 1311 Executive Center Drive, Suite 200 Tallahassee, FL 32301	Carolyn Marek Time Warner Telecom of Florida, L.P. 233 Bramerton Court Franklin, TN 37069


Patrick K. Wiggins