

HOPPING GREEN SAMS & SMITH

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET  
POST OFFICE BOX 6526  
TALLAHASSEE, FLORIDA 32314

(850) 222-7500

FAX (850) 224-8551

FAX (850) 425-3415

www.hgss.com

GARY V. PERKO  
MICHAEL P. PETROVICH  
DAVID L. POWELL  
JOHN K. POWELL  
WILLIAM D. PRESTON  
CAROLYN S. RAEPPEL  
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OF COUNSEL  
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SHANNON L. NOVEY  
ERIC T. OLSEN

August 25, 2000

ORIGINAL

BY HAND DELIVERY

Blanca Bayó  
Director, Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Re: Docket No. 000121-TP

Dear Ms. Bayó:

Enclosed for filing in the above docket are the original and fifteen copies of WorldCom's Post Workshop Comments.

By copies of this letter, this document has been furnished to the parties on the attached service list.

Very truly yours,

*Richard D. Melson*

Richard D. Melson

RDM/kcg  
cc: parties of record

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into the )  
establishment of operations )  
support systems permanent )  
performance measures for )  
incumbent local exchange )  
telecommunications companies )  
\_\_\_\_\_ )

Docket No. 000121-TP

Filed: August 25, 2000

**WORLDCOM'S POST-WORKSHOP COMMENTS**

WorldCom hereby files its post-workshop comments in response to questions raised by staff in the August 8, 2000 workshop in this docket.

**LEGAL ISSUES**

- 1. Does the Commission have the authority to establish, in advance, a generic enforcement mechanism provision which would be inserted in interconnection agreements in the event negotiations on this provision fail?**

WorldCom anticipates that the outcome of this docket would include an order directing BellSouth, Verizon, and Sprint to establish and track certain performance measures and implementing an enforcement mechanism to provide the ILECs the appropriate incentive to maintain the levels of performance ordered by the Commission. WorldCom contemplates that the Commission will consider ordering performance measurements for the ILECs, but that the performance measures and enforcement mechanisms may be considered separately for each ILEC. Numerous ALECs have already intervened in this proceeding. Essentially, the Commission would consider these issues on a generic basis by ILEC.

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The Commission has considered this approach in response to the petition filed by the Competitive Carriers' Association which requested the Commission to establish competitive rates for BellSouth's unbundled network elements, to establish third party testing of BellSouth's OSS, and to implement a competitive forum to address improved collocation procedures and performance standards for BellSouth, along with self-executing remedies. (Docket No. 981834-TP, filed December 10, 1998).

In response to the Competitive Carriers' petition, the Commission determined that it will proceed on a generic basis to address issues regarding UNE pricing and deaveraging, OSS issues, and collocation and access to loops. With respect to UNE pricing, the Commission explained why it was appropriate to consider the issues on a generic basis:

[I]t appears that a movement from relying solely on arbitration and negotiation between specific individual parties to a generic proceeding where all parties participate is more appropriate. The Competitive Carriers have raised several important issues, such as pricing of the loop-port UNE combination, that are best addressed through the equal participation of all affected and interested carriers. We do not intend by this decision to do away with all negotiation and arbitration processes prescribed by the Act. We agree with the Competitive Carriers that certain important pricing issues should be examined on a more generic basis in light of the experience in the marketplace with the our [sic] previously ordered prices. Nothing in state or federal law prohibits a generic approach to addressing these issues. (Order No. PSC-99-1078-PCO-TP, issued May 26, 1999, pp 6, 7)

The Commission decided that it will conduct a Section 120.57(1), Florida Statutes, formal administrative hearing to address UNE pricing and to conduct workshops in an effort to resolve OSS operational issues. The Commission also stated that it will conduct a formal administrative hearing process for OSS costing and pricing issues.

Moreover, Section 120.80(13)(d) states that the Commission is authorized to employ procedures consistent with the Act thereby providing the Commission the procedural flexibility necessary to implement the Act.

WorldCom anticipates that most ALECs will not want to arbitrate the issue of performance measurements and enforcement mechanisms but instead will choose to opt-in to the provisions established in this proceeding, which will be binding on the ILECs. If, however, an ALEC chooses to arbitrate these issues in the context of its own arbitration, it would be able to do so.

**2. Does the adoption of an enforcement mechanism provision by the Commission constitute the awarding of damages?**

No. The Federal District Court clearly provides that this Commission has the authority to establish an enforcement mechanism:

First, any compensation provision in the arbitrated agreement would not necessarily require enforcement by the Florida Commission. A compensation provision could, for example, be self-executing or, to the extent necessary, enforceable in court. Thus, whatever the effect of Mobil America on the Florida Commission's ability to enforce a compensation provision, there is assuredly nothing in that decision that precludes the Florida Commission from arbitrating a request for a compensation provision as part of an arbitration proceeding otherwise properly undertaken by the Florida Commission.

Second, if a compensation mechanism were truly required by the Telecommunications Act and could be adopted in some form without imposing on the Florida Commission an unconstitutional burden, see Printz v. United States, 521 U.S. 898, 117 S. Ct. 2365, 138 L. Ed. 2nd 914, (1997), then any contrary Florida law obviously would not preclude adoption of such a provision. Under the Supremacy Clause, see U.S. Const. Art. VI, the Telecommunications Act, not any contrary Florida provision, is the supreme law of the land. *MCI Telecommunications Corporation, et al. vs. BellSouth Telecommunications, Inc., et al*, Case No. 4:97cv141-RH, issued June 6, 2000, pp 35-36.

Thus, if the Commission chooses to proceed on a generic basis for the reasons stated in the preceding response, the Commission still retains the authority to establish an enforcement mechanism under 252 of the Act.

## **TECHNICAL COMMENTS**

### **Sole Remedies**

WorldCom agrees with BellSouth that an enforcement mechanism should not be the sole remedy option available to ALECs when they receive poor performance; however, it is the only recourse for ALECs that is self-effectuating which does not require litigation or Commission oversight. The enforcement mechanism should be the primary means to encourage ILECs to provide service at parity to ALECs pre-271 approval, to prevent backsliding post- 271 approval and to attempt to provide a remedy to the ALEC for harm.

This Commission should not make performance remedies the sole remedy but the Commission must establish remedies that are sufficient enough to encourage ILECs to correct poor performance without litigation or any/much oversight by the Commission.

### **Remedy Measures**

WorldCom disagrees that there should be only outcome-oriented metric remedies. WorldCom believes that the opportunities for ILECs to harm ALECs need to be reported and remedied when disparity occurs. The ILEC should pay for each instance of poor performance when multiple harms to the customer or ALEC occur. BellSouth only wants to pay once, even if it fails the metrics multiple times.

For example, when an ILEC misses an appointment due to lack of facilities, it hurts the customer and ALEC. The ILEC should be encouraged not to miss appointments and to have facilities available. When the ILEC continues not to have facilities available after 15, 30 or even 60 days, this is a progressive harm. The ILEC only may be motivated to resolve the problem by not only continuing the remedy payment, but also by increasing it. The Commission must be careful not to require the ILEC to pay once for lack of facilities; instead, it needs to encourage the ILEC to add facilities as quickly as possible. Moreover, requiring the ILEC to pay the same amount of money for missing 15 days as it would for missing 60 days of missed appointments, for example, \$1000 regardless, may make it advantageous for the ILEC to miss the ALEC's appointments for 60 days once the appointment is missed. Thus, competition would be delayed significantly. Remedies should be set specifically to take the progressive harm into account. For example, the ILEC could be required to pay \$1000 for missing 15 days but the amount would increase to \$3000 for missing 30 days and \$10,000 for missing 60 days. Remedies taking progressive harm into account would motivate the ILEC to resolve the problem immediately.

Another example is if the ILEC believes it may miss an appointment, the ILECs need to notify the ALEC no later than 24 hours in advance. This gives the ALEC an opportunity to contact the customer and make alternative arrangements, if possible. When the ILEC fails to do so, the ILEC should provide a remedy to the ALEC for not providing advance notice for the customer. This is harmful to the ALEC – it makes the ALEC look disorganized and unprofessional – and to the customer for not being given the opportunity to reschedule the time or date or find the status of his or her order. If the

ILEC misses the actual due date, this would be a separate and distinct harm to both the customer and ALEC. The ILEC should incur a remedy for failing its commitments.

This Commission must ensure that each performance metric is backed up through financial remedies.

### **Small Sample Size**

WorldCom recommends permutation testing for small sample sizes. This testing can be used for a sample size of one. If this Commission, however, is looking for an alternative to permutation testing, WorldCom would like to explore the option of reaggregation across geographic levels/regions for an ALEC as long as standard intervals within the level or region remain the same. Also, aggregating across several months for the same ALEC can address small sample sizes without using permutation testing.

This Commission should reject proposals that exclude ALEC customers and instead pursue other ways to handle small sample sizes through permutation testing or aggregation of like data via geographic or monthly analysis.

### **Accurate Reporting**

WorldCom supports the assertion by several parties that there should be reasonable assurances that reported data is accurate. The best way to do this is through annual audits. An ILEC should test all of its OSS systems and processes at least once a year at its own expense to prove its data is valid. After all, the ILEC is the one with the capability to make sure its systems and processes are non-discriminatory and reflect

accurate data. The ILEC pays remedies based on this data so it is imperative that the ILEC's self-reported data is accurate.

This Commission should order ILECs to undergo annual testing of its metrics to ensure that reporting is accurate. These audits should continue until the ILEC is no longer the dominant provider.

### **Remedies**

It is completely unreasonable to assume that an ALEC will go into business on the hope that an ILEC will fail to meet the performance measurements and will be required to pay the ALEC a remedy. First, there is no guarantee that an ILEC will ever pay a dime to an ALEC. In fact, it is in the ILEC's power not to harm an ALEC or its customer. Second, when the business rules are created correctly, there is no opportunity for ALEC-caused delays or errors to influence the ILEC's performance. Any ILEC disparity performance caused by the ALEC or end-user is excluded from the metrics. Therefore, there is no incentive for an ALEC to prefer remedy payments rather than to obtain good performance for itself and its customers.

This Commission should not limit the size of an ILEC's liability nor set low levels for individual remedy amounts, based on the unfounded fear that an ALEC could somehow profit from poor performance remedies.

### **Weighting**

All metrics are important to WorldCom and our customers. WorldCom does not want to presuppose what will most influence a customer. BellSouth, in its oral



presentation on August 8, suggested that a metric-like average response time for queries is less important than missing due dates. If, however, the delayed or inaccurate response data cause the potential customer to be so dissatisfied with the ALEC that the customer never chooses the ALEC, then response time then becomes the critical measurement for that ALEC and the customer.

This Commission should treat metrics equally and remedies should be paid on how disparate and chronic the poor performance is to the ALEC.

### **Minimum Thresholds**

A measurement and remedy plan is needed for all ALECs to enter into the marketplace of the dominant provider. There should be no minimum thresholds before a plan can commence because the primary reason for an enforcement mechanism is to counter the dominance, incumbency and market power of the ILEC to prevent discriminatory treatment.

This Commission should initiate metric and remedy plans for BellSouth, Verizon, and Sprint.

### **Burn-In Period**

There is no need for a burn-in period. Most of the metrics that ultimately will be adopted will have been reported upon for months, if not years, by BellSouth. Also, it is not expected that this proceeding will conclude until sometime next year giving the ILECs even more experience with their metrics. This should provide the ILECs ample

time to 'burn-in' its systems and processes, or at a minimum, the majority of the measures.

This Commission should commence reporting and remedies on the first of the month after a metric and remedy plan is approved.

### **Corrective Action Plan**

Any metric that fails three consecutive months or six times in a year represents a significant problem. An ILEC must issue to the Commission and ALECs a corrective plan that it will implement for every metric which fails repeatedly.

This Commission should require ILECs to develop and implement corrective action plans for poor performance 3 months in a row or six months in a year.

### **Six-Month Reviews**

Because performance metrics may need to be modified over time to add new processes or adjust older benchmarks, this Commission should order that all interested parties meet every six months to review the metrics. The enforcement mechanism plan will also need to be analyzed during the six-month review to make sure the remedy amounts and structure are effective.

Respectfully submitted,

*Richard D. Nelson*

for Donna Canzano McNulty  
WorldCom, Inc.  
325 John Knox Road, Ste. 105  
Tallahassee, FL 32303  
(850) 422-1254

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail or Hand Delivery (\*) this 25th day of August, 2000.

Marsha Rule  
AT&T  
101 North Monroe St. Suite 700  
Tallahassee, FL 32301

Carolyn Marek  
Time Warner Telecom of Florida, L.P.  
233 Bramerton Court  
Franklin, TN 37069

Nancy B. White  
c/o Nancy H. Sims  
BellSouth Telecommunications,  
Inc.  
150 S. Monroe St., Suite 400  
Tallahassee, FL 32301

Tim Vaccaro  
Division of Legal Services  
Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

Michael A. Gross  
Florida Cable Telecommunications  
Asso., Inc.  
310 N. Monroe Street  
Tallahassee, FL 32301

Susan Masterton/Charles Rehwinkel  
Sprint Communications Company  
Limited Partnership  
P.O. Box 2214  
MC: FLTLH00107  
Tallahassee, FL 32316-2214

Kimberly Caswell  
Verizon Select Services Inc.  
P.O. Box 110, FLTC0007  
Tampa, FL 33601

Catherine F. Boone  
Regional Counsel  
10 Glenlake Parkway  
Suite 650  
Atlanta, Ga 30328-3495

Scott Sapperstein  
Intermedia Communications, Inc.  
3625 Queen Palm Drive  
Tampa, FL 33619-1309

Donna C. McNulty  
325 John Knox Road  
The Atrium Suite 105  
Tallahassee, FL 32303

Nanette Edwards/Brian Musselwhite  
ITC^ Deltacom  
4092 S. Memorial Parkway  
Huntsville, AL 35802

Patrick Wiggins  
Charles Pellegrini  
Wiggins Law Firm  
P.O. Drawer 1657  
Tallahassee, FL 32302

Peter Dunbar/Karen Camechis  
Pennington Law Firm  
P.O. Box 10095  
Tallahassee, FL 32302-2095

Wayne Stavanja/Mark Buechele  
Supra Telecom  
1311 Executive Center Drive,  
Suite 200  
Tallahassee, FL 32301



Attorney