

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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

Docket No.: 000121-TP

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REPORTING

DIRECT TESTIMONY

OF

JOHN J. RUBINO

ON BEHALF OF

Z-TEL COMMUNICATIONS, INC.

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DIRECT TESTIMONY OF JOHN J. RUBINO
ON BEHALF OF Z-TEL COMMUNICATIONS, INC.

1 **Q. Please give your name, title, and business address.**

2 A. John J. Rubino, Vice President, OSS Policy, Z-Tel Communications Inc., 601 S.
3 Harbour Island Blvd., Tampa, FL 33602.

4 **Q. Please briefly describe your employment history.**

5 A. Prior to joining Z-Tel, I was employed by the New York State Department of Public
6 Service ("DPS") as a Utility Operations Examiner for approximately 20 years.

7 **Q. What were your responsibilities at the New York Department of Public Service,**
8 **as they relate to opening markets to local service telecommunications**
9 **competition?**

10 A. I was part of the Department team assembled to foster local competition in New York
11 State. In that role, I participated directly in the discussions which led to the Pre-filing
12 Statement of Bell Atlantic–New York ("BANY") (Case 97-C-0271). I was also the
13 project manager for the Third-party test of Bell Atlantic's Operations Support
14 Systems. I was part of the team that developed the Performance Assurance Plan for
15 BANY. Finally, I was a leader of the collaborative effort to develop carrier-to-carrier
16 service standards for New York State (Case 97-C-0139).

17 **Q. What is the purpose of your testimony today?**

18 A. The purpose of my testimony is to provide insight, based upon my experience in New
19 York, as to the problems which will likely arise in utilizing performance measures
20 to track BellSouth's provisioning of unbundled network elements and services to
21 CLECs. I will describe the process by which the New York measures were
22 developed and refined. I will describe the problems that arose when the measures

1 were used to monitor actual market experience and enforce the standards that had
2 been established. I will then discuss the steps necessary for Florida to ensure that
3 similar problems are identified early and managed in the proper manner prior to
4 having a direct impact on CLECs and their customers.

5 **Q. How were the New York Inter-carrier measures developed?**

6 A. The New York Inter-carrier Guidelines were developed through a collaborative
7 process involving BANY, all interested CLECs, and New York State Department of
8 Public Service staff. The group attempted to develop a comprehensive set of
9 guidelines that could be practically implemented, and that would accurately measure
10 the quality of service provided among carriers. This process resulted in the Inter-
11 carrier Guidelines, which were adopted by the Commission on an interim basis.
12 These measures were incorporated into the Pre-filing statement of Bell Atlantic-New
13 York as the standard by which Bell Atlantic's performance would be judged in the
14 context of the Third-party Test of Bell Atlantic's OSS systems. The Inter-carrier
15 Guidelines were also used as the basis for BANY's Amended Performance
16 Assurance Plan, which was adopted by the New York Public Service Commission
17 on November 3, 1999.

18 **Q. Were problems encountered with those metrics during the Third-party Test?**

19 A. Yes. When KPMG and Staff began examining how the metrics would actually be
20 applied in the test (which was designed to emulate the future, competitive market)
21 KPMG and staff found that some metrics were not adequately defined. In addition,
22 there was not an effective system of internal controls to ensure the accuracy and
23 consistency of metric data.

24 **Q. Please explain the definitional deficiencies.**

1 A. The metric definitions did not adequately define how the metrics would be
2 calculated, in terms of the types of activity to be captured by the metrics and the
3 method by which performance results would be calculated. For example, metrics
4 aimed at manually processed orders should exclude orders handled mechanically, so
5 as to not overstate the ILEC's performance for manually processed orders.

6 **Q. What problems were caused by the inadequate definitions, and what was the**
7 **impact of these problems on internal controls?**

8 A. Though it utilized experts from BANY, CLECs, and DPS staff, the collaborative
9 process did not initially result in clear and unequivocal instructions as to which data
10 to capture and how to compute performance. Such a level of refinement was
11 achieved as the market developed and with the assistance of the outside consultants
12 retained for the Third-party test (*i.e.*, KPMG and Hewlett Packard). Therefore,
13 individual Bell Atlantic employees had to interpret the metric definitions. In many
14 cases, Bell Atlantic employees made assumptions necessary to compute metrics that
15 were not anticipated, understood, or agreed to by the parties that took part in the
16 carrier-to-carrier collaborative. Finally, key assumptions were not documented. The
17 result was that KPMG found 90 of 167 metrics (56%) were reported inaccurately for
18 the month of September, 1999. For 70 of the 90 incorrect metrics, BANY was not
19 able to identify the source of the errors.

20 **Q. How were the problems of inadequate definitions and weak internal controls**
21 **addressed?**

22 A. The collaborative was reconvened to more clearly define the measures and the
23 methods by which they would be calculated. Bell Atlantic committed to develop a
24 system of internal controls. Finally, a team of New York State DPS Staff was

1 assembled to replicate the metrics reported by Bell Atlantic to ensure that the metrics
2 were reported accurately.

3 **Q. Even with good metric definitions and documentation developed prior to actual**
4 **market development, will all potential problems be caught?**

5 A. No. In New York, problems arose as the market developed that required the New
6 York Public Service Commission to adjust the metrics. It is my opinion that as
7 markets evolve, new problems are likely to occur on an ongoing basis.

8 **Q. Can you relate a New York experience that required Commission intervention?**

9 A. Yes. Beginning in late 1999 and continuing through March 2000, Bell Atlantic lost
10 or mishandled tens of thousands of CLEC orders for New York customers. However,
11 this problem was not reflected in the metrics, and was only brought to the attention
12 of regulators when CLECs filed formal complaints with the New York Public
13 Service Commission.

14 **Q. Please explain what is meant by the term "lost or mishandled orders."**

15 A. These were orders received by BANY from CLECs for which BANY failed to
16 provide some or all of the following: acknowledgement of BANY's receipt of the
17 order, firm order confirmation, or a notice of completion.

18 **Q. How prevalent was this problem?**

19 A. Although it is difficult to answer that question precisely, CLECs stated that 20 to
20 30% of their orders fell into this category.

21 **Q. What impact did this have on customers?**

22 A. Customers whose orders were lost had to wait up to 12 weeks to obtain the service
23 they ordered from CLECs. Other customers' orders were provisioned, but the
24 CLECs were not notified of this completion and therefore could not begin billing.

1 In my opinion, this led to an unacceptable level of dissatisfaction on the part of
2 customers willing to try competitive local exchange carriers.

3 **Q. Was this poor performance reflected in BANY's performance as reported under**
4 **the carrier-to-carrier guidelines?**

5 A. To a great extent, it was not.

6 **Q. Why was the poor performance not reflected?**

7 A. Bell Atlantic only measured orders that were completed. Since the lost orders were
8 not completed, they were not measured. It was only when real market experience was
9 gained did BANY, CLECs and regulators become aware that the practice of
10 measuring only completed orders was not practical in a real market environment. In
11 other instances, BANY's measurement software did not measure the entire time that
12 BANY was responsible for the order, but only part of the time. This tended to
13 understate the time it took for BANY to process orders. In many cases, BANY's
14 measurement systems thought that the order was complete and the CLEC was
15 notified, yet that was not the case. In fact, orders were failing in systems not
16 measured.

17 **Q. How would you characterize Bell Atlantic's response to the problem of lost**
18 **orders?**

19 A. Initially, BANY claimed that the lost orders were a result of CLEC problems.
20 BANY pointed to its carrier-to-carrier performance reports, which indicated that no
21 problem existed. Due to BA's lack of responsiveness, both AT&T and MCI filed
22 formal complaints against BANY as part of the DPS Rapid Response dispute
23 resolution process. These complaints were filed in late December, 1999. It was only
24 after direct intervention by the New York State DPS Staff, that BANY admitted
25 responsibility for the problems on February 4, 2000. However, it became necessary

1 for the DPS to monitor BANY's performance on a daily basis and to fine BANY \$10
2 million.

3 **Q. Why did the Performance Assurance Plan fail to penalize BANY for the lost**
4 **orders problem?**

5 A. The carrier to carrier metrics that formed the basis of the Performance Assurance
6 Plan at that time did not take measurements in a manner that would capture the
7 problem. Since the problem was not captured by the metrics, no penalties resulted.

8 **Q. Could the problem of missing orders have been avoided?**

9 A. I think that every developing market is going to experience growing pains, just as
10 New York did. Problems will arise on an ongoing basis. However, I think that the
11 problem of missing orders could have been greatly mitigated if BANY had reacted
12 more quickly to correct the problems.

13 **Q. Is the problem of lost or mishandled orders addressed in the metrics proposed**
14 **for Florida?**

15 A. In the documentation I have reviewed in the context of this case, I have not seen any
16 evidence that the metrics proposed for Florida will capture the problem of missing
17 or mishandled orders, as experienced in New York.

18 **Q. On a more global basis, what can Florida do to avoid the problems in New**
19 **York?**

20 A. I believe that the New York experience demonstrates that carrier-to-carrier metrics
21 must be flexible enough to allow refinement as market conditions so require. The
22 only way to ensure proper market-based refinement is to ensure that the CLECs
23 doing business in a market have input into metrics definition and analysis. New
24 York's experience also shows that carrier to carrier metrics and data must be
25 regularly audited to ensure accuracy. New York has utilized a penalty structure and

1 statistical methodology as tools to foster development of the competitive market.
2 Finally, a continuing strong role by regulatory agencies is essential to nurturing and
3 sustaining a competitive market.

4 **Q. Please explain how these tools were used by the New York Public Service**
5 **Commission.**

6 A. The New York Public Service Commission retained control over the Performance
7 Assurance Plan, in term of the metrics included in the plan and the overall penalty
8 structure. As a result, the Commission has the flexibility to refine metrics as needed
9 given the evolution of the market. The New York Public Service Commission has
10 the ability to increase the weights of certain metrics or to increase penalties. In fact,
11 in approving BANY's Section 271 application, the FCC specifically cited this ability
12 as important. *See Application by Bell Atlantic New York for Authorization Under*
13 *Section 271 of the Communications Act To Provide In-Region, InterLATA Service in*
14 *the State of New York, Memorandum Opinion and Order, CC Docket No. 99-295,*
15 *¶ 437 (rel. Dec. 22, 1999).*

16 **Q. Pertaining to this specific proceeding, what would you recommend?**

17 A. I would recommend that Florida regulators examine the development of some type
18 of Performance Assurance Plan as early as possible in the evolution of their local
19 service market. This would allow Florida to refine such an enforcement mechanism
20 as necessary for its developing market. I believe that local competition is most
21 vulnerable in the early stages of development, and although the 1996
22 Telecommunications Act is over four years old, local competition remains in its
23 infancy. Therefore, an effective Performance Assurance Plan may help to avoid
24 painful experiences for Florida consumers and the new companies trying to provide
25 local service.

1 **Q. Do you have any other suggestions?**

2 A. The New York experience demonstrates that even after an extensive third-party test,
3 it is important to observe the actual market in action to ensure that the performance
4 metrics capture and report results accurately. For example, Pennsylvania has ordered
5 a 90-day commercial availability period, beginning upon completion of the test, to
6 assess actual market performance. So that the Commission can make the most of this
7 90-day period, I would recommend retaining KPMG to provide the Commission with
8 independent technical advice should disputes arise. This can serve to speed the
9 process by minimizing additional discovery and comment periods.

10 **Q. Finally, what role do you believe the Florida Public Service Commission should**
11 **play regarding any performance assurance plan developed in connection with**
12 **this proceeding?**

13 A. I believe that, in the end, a performance assurance plan for local competition impacts
14 the quality and variety of telecommunications service provided to Florida consumers.
15 Therefore, I believe that any plan should include provisions that allow the Florida
16 Commission to modify the plan as needed to address actual market conditions.

17 **Q. Does that conclude your testimony?**

18 A. Yes. It does.

19

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Direct Testimony of John J. Rubino has been furnished by hand delivery(*) or U.S. mail on this 1st day of March, to:

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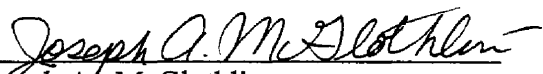
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