

ORIGINAL
LAW OFFICES
Messer, Caparello & Self
A Professional Association

Post Office Box 1876
Tallahassee, Florida 32302-1876
Internet: www.lawfla.com

November 20, 2003

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

RECEIVED BY FPSC
NOV 20 PM 12:37
COMMISSION
CLERK

Re: Docket No. 000121A-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC, DIECA Communications, Inc. d/b/a Covad Communications Company; ITC^DeltaCom; MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc.; Network Telephone Corporation; NuVox Communications, Inc. and Talk America, Inc. (the Competitive Local Exchange Carrier, "CLEC Coalition") are an original and fifteen copies of the following documents:

- 11751-03 1. CLEC Coalition Opposition to BellSouth's Motion to Modify Order; and
- 11752-03 2. CLEC Coalition's Motion for Leave to Late File Response in Opposition to BellSouth's Motion to Modify Order.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

AUS _____
CAF _____
CMP _____
COM 5 _____
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
SEC 1 _____
OTH _____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Sincerely yours,

Floyd R. Self

FRS/amb

Enclosures

cc: Parties of Record

DOCUMENT NUMBER-DATE

11751 NOV 20 03

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:)
Investigation Into The Establishment) Docket No. 000121A-TP
Of Operations Support Systems Permanent)
Performance Measure For Incumbent Local) Filed: November 20, 2003
Exchange Telecommunications Companies)
_____)

CLEC COALITION OPPOSITION TO BELL SOUTH'S MOTION TO MODIFY ORDER

AT&T Communications of the Southern States, LLC; DIECA Communications, Inc. d/b/a Covad Communications Company; ITC^DeltaCom; MCI metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc.; Network Telephone Corp.; NuVox Communications, Inc., and Talk America, Inc. (the Competitive Local Exchange Carrier, "CLEC Coalition") hereby file these Comments in opposition to the Motion of BellSouth Telecommunications, Inc. ("BellSouth") to Modify Order ("BellSouth's Motion") filed on November 7, 2003, almost six months after entry of the *Consummating Order* on May 15, 2003 (Order No. PSC-03-0603-CO-TP).

The May 15, 2003, Order made final the provisions of the *Notice of Proposed Agency Action Order Implementing Proposed Revisions to the Performance Assessment Plan* (Order No. PSC-03-0529-PAA-TP) ("Notice"), entered on April 22, 2003. The Notice directed BellSouth to implement a penalty for Measurement B-10, Percent Billing Errors Corrected in X Days, by "the conclusion of our proceeding on this remedy structure of the SEEM Plan, or 120 days, whichever comes first." Notice at p. 14. BellSouth's tardy Motion asks for a delay in implementing this measure, requesting elimination of the 120-day requirement and waiting until the conclusion of

the proceeding on the remedy structure. As the ground for this Motion, BellSouth claims that “...it is not possible to implement the penalty until the SEEM remedy plan is completed.”¹

BellSouth’s Motion should be denied for three reasons: 1) it is untimely filed; (2) its ground is unsupported, in that the current fee schedule designates the remedy amount for Billing submeasures and implementation of the new metric is not dependent on the proceedings established to incorporate a “severity component” within the remedy plan; and 3) BellSouth’s “long term inability to meet acceptable time frame for completing billing disputes”² needs to be remedied without further delay.

I. BELLSOUTH’S MOTION IS UNTIMELY

BellSouth’s Motion filed on November 7, 2003 is the first time the company has raised the suggestion that implementing Measurement B-10, Percent Billing Errors Corrected in X Days, within 120 days is somehow “not possible”. Motion at p. 2. This objection should have been raised after the *Notice* was issued on April 22, 2003, during the period when interested parties can challenge a Proposed Agency Action (“PAA”). Fla. Admin. Code Rule 25-22.029. Another missed opportunity was the fifteen-day period after the *Consummating Order* was issued, for BellSouth could have asserted this as a ground for appealing from that order. Fla. R.App.P. 9.110.

BellSouth advances no reason as to why the substance of its Motion was not raised within the prescribed times for opposing a PAA or appealing a final order. Similarly, it cannot point to changed circumstances, newly discovered evidence or any other grounds to justify why this point is raised at this late date instead of at the proper time. Given that it has waited over five months from the final order to file its Motion, rather than making it within fifteen days from May 15,

¹ BellSouth’s Motion at p. 2.

² *Proposed Agency Action Addressing Proposed Changes To BellSouth’s Performance Assessment Plans That Were Not Agreed Upon By The Parties Participating In The Six-Month Review Process*, Florida Public Service Commission, Docket No. 000121A-TP, March 20, 2003, at p. 16.

2003, the date of the *Consummating Order*, BellSouth has clearly waived its opportunity for the Commission or any other legal authority to consider changing the terms of a final order.

II. THERE IS NO SUPPORT FOR BELLSOUTH'S MOTION

BellSouth's Motion asserts that one of the two dates for implementation cannot be met because it is impossible to implement the penalty until the SEEM remedy plan is completed. To the extent the *Consummating Order* requires the penalty for new measurement B-10 to be implemented at the earlier of 120 days or conclusion of the SEEM (Self-Effectuating Enforcement Mechanism) remedy plan proceeding, BellSouth maintains that it cannot be done before the latter event. The company's position is that the penalty for this measure cannot be applied until the amount is set, which is done in the fee schedule. This Commission should deny BellSouth's Motion for the reasons set forth below.

A. Because the current fee schedule designates the remedy amount for billing submeasures, there is no need to await conclusion of the SEEM review to apply any penalty.

A fee schedule for Billing measures exists today, a fact that BellSouth skirts in its Motion. The same fee schedule amount designated for non-compliant performance for other Billing measures, such as B-1 Invoice Accuracy, B-2 Mean Time To Deliver Invoices and B-3 Usage Daily Delivery Accuracy, is applicable for the metric at issue, B-10, Percent Billing Errors Corrected in X Days. Thus, there is no reason to further delay implementation of B-10 until the remedy plan review is complete. That review will establish a methodology to incorporate the severity of a violation in the determination of a remedy amount for all measures. Its outcome will impact all metrics within the remedy plan. Its only connection to the remedy amount for metric B-10 is as follows: the current fee schedule amount for Billing measures is the remedy amount for

B-10, and once the review is concluded, that remedy amount will be affected, as will those for all measures, by incorporation of a severity mechanism into its determination.

BellSouth has been given more than ample time to incorporate B-10 within the remedy plan and should do so as ordered. The fee schedule amount for Billing measures has been applied for other Billing measures since the remedy plan has been implemented in Florida. There is no legitimate reason for BellSouth not to use the current fee schedule amount.

B. There is no special linkage between the new metric B-10 (Percent Billing Errors Corrected In X Days) and the proceedings to incorporate a “severity component” within the remedy plan

The “ongoing review” addresses how the SEEM remedy plan should be modified to incorporate the severity of a performance measurement failure when setting the size of the remedy payment. If the “ongoing review” results in impacts to remedy amounts, those changes will be implemented for all metrics at that point. Since September of 2002, the parties and Staff have attempted to resolve the issue of how best to incorporate the severity of a performance measure failure in the remedy payment. Throughout the course of this proceeding, BellSouth has determined remedy payment amounts for Billing measures in the remedy plan. Remedy amounts for Billing measures were implemented for May 2002 data. Therefore, the new billing measure, B-10, Percent Billing Errors Corrected In X Days, is not dependent on completion of the “ongoing review” for the determination of remedy payments.

It is telling that while BellSouth’s Motion implies that there is a linkage between the new metric and the SEEM severity mechanism review, it does not attempt to substantiate this alleged dependency. In a conclusory fashion, BellSouth’s Motion declares that penalties cannot be applied for the new measure, because the amount is allegedly not set and therefore the penalty cannot be applied. This argument is fatally flawed, however, in that penalties *can* be applied for

the new measure. Remedy payments for billing measures have been in place for months, and any change to those measures can be made once the SEEM plan review is concluded. That this review is not finished does not inhibit the continued operation of a workable plan of remedy payments.

For these reasons, Commission review of BellSouth's Motion will reveal, as noted by the CLEC Coalition, that BellSouth's allegations lack merit. It is clear that implementation of the new Billing measure B-10 is not linked in any meaningful way to the severity mechanism review. All performance metrics will be affected by the outcome of that review, but in the meantime, there is no reason to prohibit implementation of metric B-10 as ordered.

III. BELLSOUTH'S LONG TERM INABILITY TO MEET THE ACCEPTABLE TIME FRAME FOR COMPLETING BILLING DISPUTES³ MUST BE SANCTIONED.

The billing dispute metric was initially implemented in May 2002 as a diagnostic measure. The CLECs' comments concerning proposed changes to BellSouth's Performance Measurement Plan disclosed BellSouth's poor performance from May to July 2002⁴. For July, BellSouth's performance was 36.53% for resale and 6.44% for UNE. June's UNE performance was 43.97% and UNE performance for May was 6.97%. Subsequently, Staff conducted a review of BellSouth's billing dispute process, in which it studied 2002 billing dispute performance. Staff's study showed that "BellSouth averaged nearly three months to process resale and UNE billing disputes during 2002."⁵

³*Id.*

⁴*ALEC Coalition Comments Concerning Proposed Changes to BellSouth's Performance Measurement Plan*, Florida Public Service Commission, Docket No. 000121A-TP, filed August 30, 2002, Exhibit 3, p. 5.

⁵*Proposed Agency Action Addressing Proposed Changes To BellSouth's Performance Assessment Plan That Were Not Agreed Upon By The Parties Participating In The Six-Month Review Process*, Florida Public Service Commission, Docket No. 000121A-TP, March 20, 2003, at p. 16.

BellSouth continues to be untimely in addressing billing errors, even in 2003. Previous CLEC Coalition comments and BellSouth's own 2003 performance demonstrate that BellSouth does not correct billing errors in an acceptable manner. To delay sanctioning unacceptable performance any longer would be inappropriate and clearly not in the best interest of promoting competition in the local market.

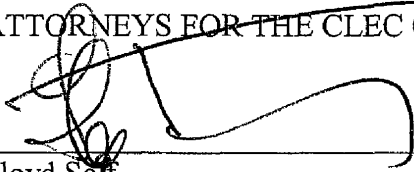
IV. CONCLUSION

For the reasons set forth in this Opposition, BellSouth's untimely and unfounded Motion to modify an implementation deadline for the new Billing metric, B-10 Percent Billing Errors Corrected in X Days in SEEM, as set forth in the *Notice*, should be denied.

Undersigned counsel has been authorized to submit this document on behalf The CLEC Coalition.

Respectfully submitted this the 20th day of November 2003.

ATTORNEYS FOR THE CLEC COALITION



Floyd Self
Messer, Caparello & Self
215 South Monroe Street, Ste 701
P.O. Box 1876
Tallahassee, FL 32302-1876
850-222-0720

Tracy Hatch
Senior Attorney
AT&T Communications for the Southern States, LLC
101 N. Monroe St., Suite 700
Tallahassee, FL 32301

Charles E. Watkins
Senior Counsel
Covad Communications Company
1230 Peachtree Street, NE, 19th Floor
Atlanta, GA 30309

Nanette S. Edwards, Esq.
Director, Regulatory
ITC^DeltaCom Communications, Inc.
4092 S. Memorial Parkway
Huntsville, AL 35802

Donna McNulty
MCI WorldCom Communications, Inc.
1203 Governors Square Blvd, Suite 201
Tallahassee, FL 32301-2960

Margaret Ring, Esq.
Director, Regulatory Affairs
Network Telephone Corporation
815 South Palafox Street
Pensacola FL 32501-5937

Hamilton E. Russell, III
NuVox Communications, Inc.
VP of Legal and Regulatory Affairs
301 North Main Street, Suite 5000
Greenville SC 29601-2153

Francie McComb, Esq.
Talk America
6805 Route 202
New Hope, PA 18938

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following parties by Hand Delivery (*) and/or U.S. Mail this 20th day of November, 2003.

Beth Keating, Esq.*
Division of Legal Services, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Nancy B. White, Esq.
c/o Ms. Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

David Tobin, Esq.
Florida Public Telecommunications Association
Tobin & Reyes
7251 West Palmetto Park Road, #205
Boca Raton, FL 33433-3487

Charles J. Rehwinkel, Esq.
Susan Masterton, Esq.
Mr. F. Ben Poag
Sprint-Florida, Incorporated
MC FLTHO0107
P.O. Box 2214
Tallahassee, FL 32399-2214

Michael A. Gross, Esq.
Vice President, Regulatory Affairs
& Regulatory Counsel
Florida Cable Telecommunications Association, Inc.
246 East 6th Avenue
Tallahassee, FL 32303

Donna McNulty, Esq.
WorldCom, Inc.
1203 Governors Square Blvd, Suite 201
Tallahassee, FL 32301-2960

J. Jeffrey Wahlen, Esq.
Ausley & McMullen
P.O. Box 391
Tallahassee, FL 32302

Peter M. Dunbar, Esq.
Pennington, Moore, Wilkinson, Bell &
Dunbar, P.A.
P.O. Box 10095
Tallahassee, FL 32302-2095

Ms. Carolyn Marek
Vice President of Regulatory Affairs
Southeast Region
Time Warner Communications
233 Bramerton Court
Franklin, TN 37069

Tracy W. Hatch, Esq.
AT&T Communications of the Southern States, LLC
101 N. Monroe St., Suite 700
Tallahassee, FL 32301

Virginia C. Tate, Esq.
AT&T Communications of the Southern States, LLC
1200 Peachtree Street, Suite 8100
Atlanta, GA 30309

Kenneth A. Hoffman, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302

Mr. Dulaney L. O'Roark, III
WorldCom, Inc.
6 Concourse Parkway, Suite 3200
Atlanta, GA 30328

Kimberly Caswell, Esq.
Verizon Select Services, Inc.
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110

William H. Weber
Senior Counsel
Covad Communications Company
1230 Peachtree Street, NE, 19th Floor
Atlanta, GA 30309

Nanette Edwards, Esq.
Brian Musselwhite, Esq.
ITC^Deltacom
4092 South Memorial Parkway
Huntsville, AL 35802

Jonathan Canis, Esq.
Michael Hazzard, Esq.
Kelley Drye Law Firm
1200 19th Street, NW Fifth Floor
Washington, DC 20036

Mr. John D. McLaughlin, Jr.
KMC Telecom, Inc.
1755 North Brown Road
Lawrenceville, GA 30043

Joseph McGlothlin, Esq.
Vicki Kaufman, Esq.
McWhirter Law firm
117 S. Gadsden Street
Tallahassee, FL 32301

Laura L. Gallagher, P.A.
101 E. College Avenue, Suite 302
Tallahassee, FL 32301

Ms. Carol Paulsen
SBC Telecom, Inc.
130 E. Travis, 4-10-A
San Antonio, TX 78205

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

Mr. John Rubino
Mr. George S. Ford
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd.
Tampa, FL 33602-5706

Mr. Angel Leiro
Mr. Joe Millstone
IDS Telcom, LLC
1525 N. W. 167th Street, Second Floor
Miami, FL 33169-5131

Mr. Richard Heatter
Mpower Communications Corp.
175 Sully's Trail, Suite 300
Pittsford, NY 14534-4558

Mr. David Wirsching
Bearing Point
1600 Market Street
Philadelphia, PA 19103-7279

Ms. Rose M. Mulvany
Birch
2020 Baltimore Avenue
Kansas City, MO 64108-1914

Tracy Hatch
Senior Attorney
AT&T Communications for the Southern States, LLC
101 N. Monroe St., Suite 700
Tallahassee, FL 32301

Charles E. Watkins
Senior Counsel
Covad Communications Company
1230 Peachtree Street, NE, 19th Floor
Atlanta, GA 30309

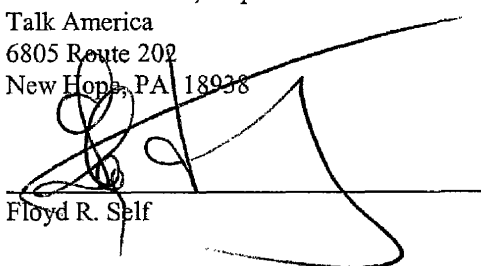
Nanette S. Edwards, Esq. Director, Regulatory
ITC^DeltaCom Communications, Inc.
4092 S. Memorial Parkway
Huntsville, AL 35802

Donna McNulty, Esq.
MCI WorldCom Communications, Inc.
1203 Governors Square Blvd, Suite 201
Tallahassee, FL 32301-2960

Margaret Ring, Esq.
Director, Regulatory Affairs
Network Telephone Corporation
815 South Palafox Street
Pensacola FL 32501-5937

Hamilton E. Russell, III
NuVox Communications, Inc.
VP of Legal and Regulatory Affairs
301 North Main Street, Suite 5000
Greenville SC 29601-2153

Francie McComb, Esq.
Talk America
6805 Route 202
New Hope, PA 18938



Floyd R. Self