

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 99
DOCKET NO. P-100, SUB 99a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 99)	
)	
In the Matter of)	
Quality of Service Objectives for Local)	ORDER AMENDING
Exchange Telephone Companies)	COMMISSION RULE R9-8
)	EFFECTIVE JULY 1, 2004
DOCKET NO. P-100, SUB 99a)	
)	
In the Matter of)	
Quality of Service Reports Pursuant to)	
Rule R9-8)	

BY THE COMMISSION: This Order concerns Commission Rule R9-8 – Service Objectives for Local Exchange Telephone Companies.

Due to the length of this Order, the following Sections have been created:

- Section I** Background (Pages 1 and 2)
- Section II** Discussions and Conclusions for 17 Unresolved Issues (Pages 2 – 76)
- Section III** Issues Negotiated and Detailed in Joint Comments (Pages 76 - 82)
- Section IV** Miscellaneous (Page 82)
- Section V** Uniform Quarterly Report (Pages 82 – 85)
- Section VI** Amended Rule R9-8 (Pages 86 - 103)

SECTION I - BACKGROUND

On December 27, 2002, the Commission issued its *Order Amending Commission Rule R9-8 and Scheduling an Evidentiary Hearing on Specific Issues*. Motions for Reconsideration of the *December 27, 2002 Order* were filed. Further, the *December 27, 2002 Order* had scheduled an evidentiary hearing to consider an appropriate maximum answertime standard for the business office and repair service and appropriate uniform reporting procedures for Operator “O” Answertime, Directory Assistance Answertime, Business Office Answertime, and Repair Service Answertime.

On March 7, 2003, the Commission issued its *Order Continuing Hearing, Comment Cycle and Amendments' Effective Date* allowing the Parties to the proceeding the opportunity to conduct negotiations on issues related to the *December 27, 2002 Order*. In the *March 7, 2003 Order*, the evidentiary hearing previously scheduled was continued, the comment cycle on the Motions for Reconsideration was suspended, and the effective date of amended Rule R9-8 was postponed indefinitely.

On October 30, 2003, the Public Staff, on behalf of itself and the Industry Task Force (ITF), filed its Joint Report. The Parties stated in the Joint Report that they had been able to resolve most of the issues in the docket and had narrowed the remaining issues. The Parties noted that 17 issues remained unresolved after the negotiation process and that the Parties had negotiated all other aspects of Rule R9-8. The Parties stated that they believed that the disputed issues did not require a hearing, but could be resolved by the Commission after the Parties had been allowed to file comments. The Parties noted that with each Party's initial comments, the Party would provide a markup of Rule R9-8 with the changes it proposed and if the Party changed its proposal between the filing of initial and reply comments, it would file a second markup of Rule R9-8.

On November 7, 2003, the Commission issued its *Order Requesting Initial and Reply Comments* on the October 30, 2003 Joint Report. The *Order* also requested that the Parties file Joint Comments listing each issue that the Parties negotiated and providing detailed support for each issue negotiated if the result was different than that ordered by the Commission in its *December 27, 2002 Order*. The Commission noted in its *November 7, 2003 Order* that it "will consider the negotiated issues and, after reviewing and considering the Joint Comments, will either accept or reject each of the negotiated issues."

Initial comments were filed on December 8, 2003 and, after an extension of time, reply comments were filed on January 14, 2004. The Joint Comments were filed on January 20, 2004.

SECTION II –
DISCUSSIONS AND CONCLUSIONS FOR 17 UNRESOLVED ISSUES

UNRESOLVED ISSUE NO. 1: Should the standard for "Out-of-Service Troubles Cleared Within 24 Hours" remain at 95% or be lowered to 90%?

POSITIONS OF PARTIES

ALLTEL: ALLTEL supports either standard upon the condition that, if the standard remains at 95%, this standard be revised to exclude trouble reports received between 5:00 pm on Saturday and 7:00 am Monday or on holidays.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: This standard should be set at 90%. This is the only network service measurement that BellSouth and other companies have recommended be relaxed.

CITIZENS: Citizens did not take a position on this issue.

CONCORD: Concord did not take a position on this issue.

LEXCOM: Lexcom supports a 90% clearing percentage.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: The standard should remain at 95%.

QUANTUMSHIFT: The standard should remain at 95%.

RANDOLPH: Randolph did not take a position on this issue.

SPRINT: The standard should be lowered to 90% consistent with the self-effectuating penalty provisions in Sprint's Price Regulation Plan.

VERIZON: The standard should be lowered to 90%.

INITIAL COMMENTS

ALLTEL: ALLTEL noted that there are some states that have the 95% requirement while other states have more relaxed standards. ALLTEL commented that Alabama has a 90% standard while South Carolina has an 85% standard. ALLTEL maintained that it is imperative for the Commission to establish a clear definition of which reports are included and which are not. ALLTEL stated that trouble reports that are received during the period between 5:00 p.m. Saturday and 7:00 a.m. on Monday or on holidays may not be dispatched immediately, depending on the availability of on-call weekend repair technicians. ALLTEL stated that, while the volume of these trouble reports received during this part of the weekend is not significant, they should be excluded to avoid distorting companies' performance on this standard. ALLTEL asserted that from its perspective, this would not be an issue if the Commission adopts the 90% standard.

BELLSOUTH: BellSouth maintained that technological and regulatory changes since this measurement was established in the 1960s/1970s have made a 95% compliance standard unrealistic. BellSouth asserted that with deregulation of items like inside wire and customer premises equipment (CPE) and a proliferation of various service/equipment providers, BellSouth can no longer dispatch a technician on an out-of-service trouble and reasonably expect that 95% of the time the trouble will be cleared within 24 hours. BellSouth noted that a large percentage of troubles are caused not by regulated services within BellSouth's control, but rather are caused by matters

totally outside of BellSouth's control, i.e., the technician was dispatched in the proper timeframe but found the trouble to be in the customer's CPE; associated with another carrier; or caused by some other nonregulated problem. BellSouth commented that these troubles consume the time of BellSouth technicians and make it almost impossible for BellSouth to clear troubles 95% of the time within 24 hours.

Moreover, BellSouth stated, as noted by the ITF in its final report, of the 42 states that have such a measure, only 14 had a standard equal to or more stringent than the Commission's. BellSouth argued that revising the standard to 90% will appropriately reflect the competitive environment that telephone carriers now face in North Carolina but will still demand excellent performance.

Finally, BellSouth stated that it recently analyzed the out-of-service trouble results for North Carolina (95%), South Carolina (85%) and Georgia (79%) and compared that data to overall customer satisfaction survey results for each state. BellSouth noted that the results of that evaluation revealed that the correlation between overall customer satisfaction with BellSouth's performance and the time it took to clear the trouble is quite low for all three states, with only a three percent (3%) or less variation in customer satisfaction being explained by variation in service restoration time. Thus, BellSouth maintained, dropping the standard five percentage points will not have a perceptible impact on a customer's overall satisfaction with BellSouth's performance in clearing an out-of-service trouble.

PUBLIC STAFF: The Public Staff stated that it believes that "Out-of-Service Troubles Cleared Within 24 Hours" is the most important service quality objective in Rule R9-8. The Public Staff noted that in the Commission's December 27, 2002, *Order Amending Commission Rule R9-8 and Scheduling An Evidentiary Hearing on Specific Issues*, the Commission found that "Out-of-Service Troubles Cleared Within 24 Hours" is a "critical measure" and retained the 95% standard. The Public Staff stated that in response to the ITF's complaint that the standard in North Carolina is unduly stringent, the Commission noted that the state survey presented in the analysis by the Georgetown Consulting Group, Inc. (GCG) attached to the ITF's November 30, 2001, Final Report reveals that 13 states have an objective equal to or more stringent than 95%. The Public Staff commented that according to the GCG's analysis, four states have a standard of 100%.

The Public Staff opined that service quality reports indicate that most companies meet or exceed this standard almost every month. The Public Staff noted that companies experiencing widespread outages due to unusual, unavoidable events, such as the December 2002 ice storm, can request a waiver of the standard for the period in which the event caused unavoidable damages.

The Public Staff asserted that the 95% benchmark for "Out-of-Service Troubles Cleared Within 24 Hours" is realistic and achievable and should not be lowered to 90%.

SPRINT: Sprint asserted that in an increasingly competitive telecommunications market, service quality standards should be established at the least level acceptable to the average customer. Sprint argued that service quality objectives should also be consistent with the service standards included in Sprint's Price Regulation Plan. Sprint stated that it has consistently exceeded those standards. Sprint noted that with the exception of periods when adverse weather conditions were experienced, it has maintained service levels consistent with the 90% standard without a material number of customer complaints. Consequently, Sprint maintained, this objective could be modified without perceptible effect on customer service or satisfaction and should be set at 90% to establish consistency between the service quality objective and the self-effectuating penalty standard in Sprint's Price Regulation Plan.

VERIZON: Verizon argued that this standard should be lowered from 95% to 90% for two related reasons. First, Verizon asserted, there is no evidence to suggest that the existing 95% standard, which is the highest of its kind in the Southeast, is necessary to maintain customer satisfaction. Second, Verizon maintained that updating the standard from 95% to 90% would be appropriate given the lengthy drive times that technicians face in serving Verizon's rural North Carolina customers.

REPLY COMMENTS

BELLSOUTH: BellSouth noted that, in its initial comments, it reiterated its long-standing position that this standard be set at 90%. BellSouth maintained that all Industry Members either supported a relaxation of this standard or took no position on it. BellSouth asserted that only the Public Staff maintained that the standard should remain at 95% -- a level of compliance that has been adopted by only 14 of 42 states and is the highest of its kind in the Southeast. BellSouth stated that it agrees with the views articulated by Verizon and Sprint on this issue in their initial comments. BellSouth stated that Verizon noted there was no evidence in the record to suggest that a 95% standard is needed to maintain customer satisfaction and that revising the standard to 90% will allow Verizon to devote resources to other endeavors that will have a positive impact on customer satisfaction. BellSouth maintained that Sprint's comments aptly noted that the objective could be modified without perceptible effect on customer service and should be set at 90% to establish consistency between this measurement and the self-effectuating penalty standard in Sprint's price regulation plan.

PUBLIC STAFF: The Public Staff noted that BellSouth argued that "technological and regulatory changes since this measurement was established in the 1960s/1970s have made a 95% compliance standard unrealistic." The Public Staff disagreed. The Public Staff argued that, according to BellSouth, a large percentage of troubles are caused by unregulated services and matters outside BellSouth's control, which consume a large part of the time of BellSouth technicians and make it almost impossible for BellSouth to meet this standard. However, the Public Staff maintained, the network changes that have occurred since the 1970s include statewide deployment of interoffice fiber optics, including numerous self-healing rings; installation of digital switching in every central office in North Carolina; implementation of self-diagnostics which enable a repair

service representative to test a customer's loop whenever the customer calls in a trouble report; and computerized dispatching of trouble reports which more efficiently utilizes repair technicians in the field. The Public Staff asserted that companies routinely cite these technological advances to support their claims of network reliability. The Public Staff stated that it believes that the 95% compliance standard is as realistic today as it was 40 years ago, if not more so.

SPRINT: Sprint stated that it has approximately 1.6 million access lines in North Carolina, and BellSouth has another approximately 2.5 million access lines. Sprint asserted that, in approving the price regulation plans for these companies, the Commission has previously found that 90% is an appropriate standard, and these plans are not subject to change in this proceeding. Sprint argued that increasing these standards for other companies in North Carolina would not apply to the approximately 4.1 million access lines, the majority of access lines in North Carolina, served by Sprint and BellSouth. Sprint maintained that insufficient justification has been given for increasing these standards.

Sprint noted that, while the Public Staff makes mention of the availability of force majeure provisions in Rule R9-8 as a possible remedy should the 95% standard be maintained, the Public Staff fails to mention the very severe standards the Public Staff would have the Commission apply to grant a force majeure exception. Sprint stated that, for example, the Public Staff does not reference the extraordinarily burdensome data requests and other requirements the Public Staff sought to apply to companies seeking force majeure treatment following the December 2002 ice storm.

DISCUSSION

The Commission notes that in the *December 27, 2002 Order*, the Commission determined that it was inappropriate to "alter the current objective for Out-of-Service Troubles Cleared Within 24 Hours thereby leaving the objective at 95%." The ITF had proposed that the objective be reduced to 90%; however, the Commission rejected the ITF's proposal. The Commission noted that "the state survey presented in the GCG's Report reveals that 13 states (or 26% of all states) have an Out-of-Service Troubles Cleared Within 24 Hours objective which is the same as or more stringent than the 95% objective currently reflected in Rule R9-8." The Commission asserted that the ITF/GCG did not provide adequate or convincing evidence to warrant a change in the current objective.

Addressing Sprint's comment that in the price regulation plans, the standard is 90% and, therefore, it is inappropriate to increase the standard for other companies in North Carolina, the Commission notes that the objective for Rule R9-8 has always remained at 95%. The Commission notes that the only application of the 90% standard in Sprint's and BellSouth's price regulation plans is in its use to calculate penalties. Sprint and BellSouth have remained obligated to provide service in North Carolina under the 95% standard required in Rule R9-8. The 90% standard is solely used to calculate any necessary penalty payments – not as the standard under Rule R9-8.

The Commission does not believe that any party filing comments provided any new or compelling reason for the Commission to alter its previous decision. The Commission continues to agree with the Public Staff that this is a critical measure for customer satisfaction. BellSouth, Verizon, and Sprint argued that a 90% objective would not adversely impact customer satisfaction. If a customer has no dial tone from a telephone line he pays a monthly fee for, obviously that customer will not be satisfied with his service or lack thereof. And the Commission believes that it goes without saying that a customer would be "more satisfied" if he could actually use his telephone sooner rather than later. The Commission continues to believe that it is entirely appropriate for the Out-of-Service Troubles Cleared Within 24 Hours objective to remain at 95%.

CONCLUSIONS: The Commission concludes that the standard for Out-of-Service Troubles Cleared Within 24 Hours should remain at 95% and not be lowered to 90%.

UNRESOLVED ISSUE NO. 2: Should the requirements to receive a waiver under the Force Majeure clause in R9-8(c) be scaled down?

POSITIONS OF PARTIES

ALLTEL: ALLTEL does not support the proposed rigorous requirements for obtaining a waiver due to a force majeure event. ALLTEL supports a more relaxed standard requiring only a detailed description of the force majeure event subject to Commission review.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: BellSouth suggested that the Commission adopt the following approach for companies who ask that the Commission excuse their performance for a particular measurement due to exogenous circumstances. First, if a company can demonstrate that a state of emergency, as declared by the Governor, existed during the time period encompassing the missed measurement and the measurement is of the type obviously impacted by such an emergency (i.e., a network measure impacted by severe weather), the company in question should not have to make any further showing to gain the requested waiver. In the absence of a state of emergency declaration, BellSouth agrees that the Public Staff's process as set forth in Rule R9-8(c) can be used for demonstrating the need for a waiver.

CITIZENS: Citizens believes that the requirements to receive a waiver under the Force Majeure clause in R9-8(c) should be scaled down, in order that this provision not impose too demanding a standard for receiving a waiver as a result of isolated and unusual or extreme circumstances.

CONCORD: Yes. The requirements should be scaled down.

LEXCOM: Lexcom still believes that, consistent with the Alliance's filing, waiver requirements should be scaled down.

MCI: MCI did not take a position on this issue.

MEBTEL: Yes.

PUBLIC STAFF: The requirements to receive a waiver under the Force Majeure clause in Rule R9-8(c) should not be scaled down.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Yes.

SPRINT: Yes.

VERIZON: Yes.

INITIAL COMMENTS

ALLTEL: ALLTEL argued that the relative burden associated with implementing the rigorous force majeure waiver process far outweighs any additional benefits which might accrue to the public as a result. ALLTEL noted that in Georgia, for example, in regards to trouble reports, Rule 515-12-1-.23(7) states, "This standard does not apply to trouble reports related to customer premise equipment, inside wiring, force majeure, or outages of services caused by persons or entities other than the telephone utility." ALLTEL maintained that there are no exogenous waiver requests or reports to file; instead, each company must identify the event(s) and provide a detailed description. ALLTEL advocated the implementation of such a process in North Carolina, which would fully provide for, in the event that the Commission finds that the company has not given satisfactory descriptions, the provision of further information as requested by the Commission, which can be audited if necessary.

CONCORD: Concord stated that while it appreciates the Commission's desire to ensure that force majeure waivers are not improvidently granted, the current approved requirements to obtain such waivers are unduly burdensome. Concord maintained that it is confident that the Commission would agree (1) that no telephone company would perceive a service outage due to force majeure as a positive event; and (2) that in the event of such an outage the first priority is to restore service to end users as quickly and efficiently as possible. Concord noted that the existing requirements to document force majeure waiver requests, however, are unnecessarily rigorous with respect to the evidentiary burden placed upon telephone companies. Concord maintained that these requirements will compel telephone companies to document each and every event and decision involved in recognizing, addressing, and resolving force majeure events. Concord noted that, in doing so, the requirements will necessarily require the commitment of company assets to these tasks at a time when these assets might be

better used to assist in the restoration of service. Concord stated that it believes that the Commission's general supervisory jurisdiction over service quality is sufficient to ensure that unjustified force majeure waivers are not granted in cases where they are not justified and that the requirements of Rule R9-8(c) can be safely scaled down to this end.

LEXCOM: Lexcom stated that it believes that in most instances, where it has not met monthly service quality objectives, a simplified form of notice describing the event should be sufficient.

MEBTEL: MebTel argued that it is unduly burdensome to require small companies like MebTel that operate with limited personnel and resources to simultaneously respond to an emergency and make detailed regulatory filings. MebTel stated that events of force majeure are exceptional and notorious. MebTel maintained that the efforts of telecommunications carriers during an emergency should be focused on restoration of service to customers rather than documentation of force majeure to justify a waiver. MebTel stated that this issue hinges on a matter of trust; it is appropriate that certified public utilities with a good reputation and service history be entitled to a presumption of good faith regarding any claim of force majeure.

PUBLIC STAFF: The Public Staff noted that, as indicated by the version of Rule R9-8 attached to the Joint Report, it has acceded to requests from the industry parties to soften the language of the Force Majeure clause adopted by the Commission in its *December 27, 2002 Order*. The Public Staff maintained that while the changes agreed upon by the parties do not necessarily scale down the requirements to receive a waiver, they clarify the standard for determining whether a company has shown that the force majeure event was unavoidable and that it made adequate preparations for the event.

The Public Staff noted that, to receive a waiver, a company must show that the event was sufficiently serious to merit a waiver, that it reasonably planned and prepared for the event, and that it could not have reasonably avoided the adverse impacts of the event. The Public Staff commented that the company must also show that the extent and nature of the requested adjustments are appropriate. The Public Staff opined that these requirements are reasonable. The Public Staff argued that a company should not receive a waiver when it had forewarning of an event, such as a hurricane or winter storm, and failed both to take prudent steps before, during, and after the event to mitigate potential service impacts and to ensure that service interruptions are corrected as quickly as possible.

The Public Staff maintained that the requirements to receive a waiver under the Force Majeure clause adopted by the Commission in its *December 27, 2002 Order*, with the modifications proposed in the Joint Report, should not be scaled down.

RANDOLPH: Randolph believes the force majeure waiver requirements as proposed by the Public Staff are unduly burdensome, especially for small companies. Randolph stated that during times of adverse weather conditions which would warrant a waiver,

Randolph would be forced to allocate resources away from servicing its customers to documenting the steps taken before, during, and after the event, compiling the request and submitting the waiver request to the Commission. Randolph noted that as seen with Sprint's request for a waiver due to the ice storm, the Public Staff was not satisfied with Sprint's documentation and requested even more information.

Randolph argued that adverse conditions affect all utilities but they are especially trying for small companies with limited personnel and resources. Randolph stated that it believes its efforts should be directed toward restoring service to its customers and not documenting the entire restoration process in hopes it will meet the Public Staff's definition of a waiver request.

Randolph noted that the Public Staff stated that it will simplify the process by providing a form to use when requesting a waiver under force majeure; however, since Randolph has not seen the form, it cannot provide comment on it.

SPRINT: Sprint commented that while it agrees that waivers should not be granted without appropriate supporting documentation, requirements to receive waivers under the Force Majeure clause in Rule R9-8(c) should be reasonable and free from unnecessarily burdensome and time consuming requests for information that prevent timely action on requests for such waivers. For this reason, Sprint stated that it has agreed to the language provided in the Joint Report of the ITF and the Public Staff filed on October 30, 2003.

VERIZON: Verizon argued that the requirements to receive a waiver under the Force Majeure Clause in Rule R9-8(c) should be modified. Verizon maintained that the existing requirements may result in companies being unreasonably denied a waiver. Verizon noted that the modest modifications to the force majeure clause set forth below will ensure that the rule is sufficiently flexible to ensure that companies are not improperly held accountable for unexpected and unforeseeable events:

Force Majeure. A company may seek a waiver of part or all of Rule R9-8 due to force majeure. To request a waiver, a company should file adjusted and unadjusted data to support its request. In order to secure Commission approval, the waiver request should clearly reasonably demonstrate that (1) the force majeure event was sufficiently serious and unusual to warrant adjustment of the monthly service quality statistics, and should include a detailed description of the adverse consequences of the event on the ratepayers' service and the company's facilities; (2) to the extent possible reasonably foreseeable, the company prudently planned and prepared in advance for such emergencies; (3) despite these plans and preparations, and the best efforts of the company personnel before, during, and after the event, failures to satisfy the service objections could not reasonably have been avoided; and (4) the extent and nature of the adjustments requested are appropriate for the circumstances. The

Commission may grant waiver requests if it finds that all four criteria have been met.

REPLY COMMENTS

CONCORD: Concord commented that it continues to believe that the force majeure waiver requirements contained in the service quality rules are unduly burdensome. Concord stated that it has discussed why this is the case in its initial comments. Concord noted that the majority of parties were silent on this issue in their initial comments, although BellSouth did address the issue. Concord maintained that its concern is that a request for this type of waiver should be based on a good faith analysis of the event in question and an assumption that the impacted telephone company is working in good faith to sustain and/or reestablish service to its customers in cases of force majeure. Concord argued that the current rule, by establishing very rigorous waiver documentation requirements, appears to presume that North Carolina telephone companies would abuse the public interest and claim force majeure waivers when they are not justified. Concord stated that it does not believe that such a presumption is warranted and wishes to avoid having a waiver claim take on an adversary character necessitating the involvement of counsel which may be necessary under the existing rules.

PUBLIC STAFF: The Public Staff commented that companies that anticipate the need for a force majeure waiver would be expected to preserve some records to support their requests. However, the Public Staff maintained, it is inaccurate to suggest, as a few parties do, that companies would be expected to compile or file waiver requests while they are recovering from emergency situations and trying to restore service. The Public Staff argued that there is no time limit specified in Rule R9-8 for the filing of such a waiver request. Certainly, the Public Staff asserted, a company could file a waiver request long after the emergency situation has occurred.

The Public Staff stated that it believes that it would be inappropriate to amend the force majeure provisions to include BellSouth's proposal to grant automatic waivers in situations where the Governor proclaims a state of emergency. The Public Staff noted that while it agrees that the Commission should take into account any state of emergency that leads to disruptions in or impairments to telephone service, this is only one factor among many that need to be considered. The Public Staff maintained that BellSouth's proposal omits any mention of the geographical scope or duration of such a state of emergency, which may exist for only a small portion of a company's region or only for a few days. The Public Staff opined that each waiver request should be tailored to include the areas affected by the emergency and the temporal parameters of the emergency.

RANDOLPH: Randolph stated that it believes the force majeure waiver requirements as proposed by the Public Staff are unduly burdensome. Randolph maintained that during times of adverse conditions which would warrant a waiver, Randolph would be forced to allocate resources away from servicing its customers to documenting the

steps taken before, during, and after the event, compiling the request and submitting the waiver request to the Commission. Randolph asserted that adverse conditions affect all utilities and forcing companies to provide extraordinarily detailed reports is unreasonable and unnecessary. Randolph argued that, contrary to the comments of the Public Staff, meteorological data is not always correct and does not always adequately inform the public of the potential effect of weather related events. Randolph maintained that not one meteorologist predicted the severity of the ice storm in December 2002. Randolph noted that in its serving area the forecast was for a small, insignificant amount of freezing rain. Randolph commented that stating a company should prepare for weather events in advance should also take into account that the information a company is given as to the potential severity of an event directly affects the actions it takes to prepare.

SPRINT: Sprint commented that it seconds BellSouth's view that when a state of emergency is declared by the Governor for the time period encompassing the missed measurement, if the measurement is of the type impacted by such emergency, the company in question should not be required to make any further showing to gain the requested waiver. Sprint noted that such an exclusion from the rule is little more than an exercise in good judgment which will avoid unnecessary expenditure of resources in circumstances such as the ice storm of December 2002, major hurricanes such as Hurricane Floyd which flooded much of eastern North Carolina for many days, Hurricane Isabel which physically isolated Hatteras Village from North Carolina and the remainder of the world, and other such extraordinary events. Sprint argued that to task companies with hyper-technical and extraordinarily detailed reporting of data as sought by the Public Staff when Sprint sought force majeure relief following the December 2002 ice storm is unreasonable, unnecessary, and a wasteful expenditure of scarce resources which would be better used in other ways to maintain high levels of customer service.

DISCUSSION

The Commission notes that, in the *December 27, 2002 Order*, the Commission determined that it was appropriate to adopt a Force Majeure clause in Rule R9-8. In fact, the ITF itself had proposed that the Commission adopt a Force Majeure clause and agreed with all but one of the Public Staff's proposed four criteria. The ITF had argued that criteria No. 2 was unreasonable. In the *December 27, 2002 Order*, the Commission modified criteria No. 2 in response to the ITF's concerns and inserted the phrase "to the extent possible".

The Commission does not believe that any party filing comments provided any new or compelling reason for the Commission to alter its previous decision. The Commission agrees with the Public Staff that there is no time limit in Rule R9-8 for the filing of a waiver request and that the companies would absolutely not be required or expected to compile or file waiver requests while they are recovering from emergency situations and trying to restore service. The Commission also agrees with the Public

Staff that BellSouth's state of emergency proposal does not consider geographic scope or duration.

The Commission also notes that on May 16, 2003, Sprint filed a Petition for Waiver of Self-Effectuating Penalties Related to Service Objectives for December 2002 due to an ice storm. The Commission further notes that by Order dated September 9, 2003, the Commission granted Sprint's Petition. In fact, the Commission granted Sprint's Petition although the Public Staff had outstanding data requests. The Commission found that, regardless of the outstanding Public Staff data requests, Sprint had adequately supported its request for an exemption.

The Commission does note that the Parties agreed to make minor modifications to the Force Majeure clause which are reflected below with underline and strikeout from the Commission's *December 27, 2002 Order*:

Force Majeure. A company may seek a waiver of part or all of Rule R9-8 due to force majeure. To request a waiver, a company should file adjusted and unadjusted data along with its waiver request ~~with the Commission which includes appropriate data to support its request~~. In order to secure Commission approval, the waiver request should clearly demonstrate that (1) the force majeure event was sufficiently serious and unusual to warrant adjustment of the reported monthly service quality statistics, including a detailed description of the adverse consequences of the event on the ratepayers' service and the company's facilities; (2) to the extent possible reasonably foreseeable, the company prudently planned and prepared in advance for such emergencies; (3) despite these plans and preparations, and the best efforts of the company personnel before, during, and after the event, failures to satisfy the service objectives were unavoidable could not reasonably have been avoided; **and** (4) the extent and nature of the adjustments requested are appropriate for the circumstances. The Commission ~~may~~ shall grant waiver requests if it finds that all four criteria have been met.

The Commission agrees with and adopts the minor modifications negotiated by the Parties for the Force Majeure clause as outlined above. The Commission notes that this issue is further discussed under Negotiated Issue No. 7.

CONCLUSIONS: The Commission declines to scale down the requirements to receive a waiver under the Force Majeure clause in Rule R9-8(c). The Commission further finds it appropriate to adopt the various minor language modifications negotiated by the Parties and to adopt the Force Majeure clause as outlined above.

UNRESOLVED ISSUE NO. 3: Should the requirement in R9-8(f) that “callers to operator ‘0’, directory assistance, business office, and repair service must be explicitly advised that they may press a ‘0’ at any time during the call” be removed?

POSITIONS OF PARTIES

ALLTEL: ALLTEL does not object to the imposition of this requirement.

AT&T: Yes. This specific provision should be removed from R9-8(f).

BELLSOUTH: Yes.

CITIZENS: Citizens does not oppose imposition of this requirement.

CONCORD: Yes. This requirement should be removed.

LEXCOM: Lexcom does not have an automated attendant system installed. Therefore, it does not take a position on this issue.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: No. The requirement in Rule R9-8(f) that “Callers to operator ‘0’, directory assistance, business office, and repair service must be explicitly advised that they may press a ‘0’ at any time during the call” should remain.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph did not take a position on this issue.

SPRINT: Although Sprint does not agree that the Commission should dictate the structure of a company’s automated menu, Sprint has not opposed such a provision in the Commission’s Rule R9-8 in hopes that by doing so an acceptable compromise could be reached in this proceeding.

VERIZON: Yes.

INITIAL COMMENTS

AT&T: AT&T argued that there is no need for a requirement to inform consumers that they may press “0” at any time during the call to opt out to a live attendant. AT&T noted that, although consumers have encountered recorded menus and are aware of this option without carriers being required to proactively provide this option, AT&T would not be able to comply with this measure if required by the Commission without significant capital expenditures to change existing systems.

BELLSOUTH: BellSouth commented that companies like itself which have specialized representatives to handle the various call types, i.e., collections, service, support, etc. spend a great deal of time developing and designing the initial menu to be customer-friendly and to route the customer to the right place the first time. BellSouth maintained that, given the “0” option, many customers will make that selection without listening to further options. BellSouth argued that, based on past experience and through customer surveys, BellSouth knows that customers are not happy when a service representative tells them that they have reached the wrong center and must transfer them to the proper call center. BellSouth asserted that this requirement will likely result in customers being on hold twice, in addition to having to explain their request twice. BellSouth stated that while there will inevitably be customers who are confused by any menu and will desire to immediately press “0” to speak to an attendant without listening to the complete menu, reaching the wrong call center will only serve to confuse and frustrate them more. Thus, BellSouth contended that this requirement be removed from Rule R9-8(f).

CONCORD: Concord stated that the purpose of an automatic call distribution (ACD) system is to assist callers seeking services by providing information or directing calls in an efficient and organized manner. Concord noted that while the ability to access a live operator is critical for some purposes, in many cases it is not necessary for the caller to accomplish his or her desired goal. Concord maintained that a properly designed ACD system recognizes and serves both these situations. Concord asserted that an overly aggressive notification requirement that a caller can access an operator immediately could unintentionally subvert the purpose and functioning of the ACD system without improving customer service. Concord stated that, in fact, such a requirement could actually harm the level of customer service provided by keeping live operators tied up routing calls to other departments that could be efficiently handled by the ACD system while callers with more complicated problems have to wait for service.

PUBLIC STAFF: The Public Staff asserted that a number of callers are unfamiliar or uncomfortable with the interactive voice response (IVR) systems used by many companies and prefer to deal with an operator. The Public Staff noted that in other cases, a caller may have a specific problem that does not fit into any of the options presented by the IVR. The Public Staff maintained that if there is not an option to press “0” to reach an operator, the caller will be forced to choose an alternative and enter submenus that will not lead to resolution of the consumer’s concern. The Public Staff argued that advising callers within 30 seconds that they can press “0” at any time to reach an operator allows persons who do not wish to utilize the options presented by the IVR unit to be transferred to a live attendant instead.

The Public Staff maintained that one drawback of this “0”-out option is that a consumer may reach an operator who is not trained to handle the customer’s request and must transfer the customer to another operator. The Public Staff commented that, while a customer should have his query handled as quickly as possible, it is even more important that a customer not be forced to utilize an IVR and be given an option to speak to an operator. The Public Staff opined that the proposed Rule R9-8 submitted

with the Joint Report supports the use of IVRs by allowing the inclusion of calls handled completely in the IVR in the answer time statistics. However, the Public Staff asserted, their use should be balanced with the consumers' right to speak to a live operator instead of being forced to use an IVR.

The Public Staff noted that a number of the companies already meet this requirement. For instance, the Public Staff noted, the initial menu for Verizon's residential business office informs the customer very early in the IVR script of the "0" option. However, the Public Staff asserted, the initial menu for BellSouth's residential business office forces the consumer to listen twice to an IVR script lasting almost 60 seconds before automatically transferring the caller to a service representative queue. The Public Staff stated that a caller who presses "0" during the initial menu is informed that "0" is not a valid option and the initial menu is then replayed from the beginning.

The Public Staff argued that the requirement in Rule R9-8(f) that "Callers to operator '0', directory assistance, business office, and repair service must be explicitly advised that they may press a '0' at any time during the call" is not unduly burdensome or unworkable and should not be removed.

SPRINT: Sprint maintained that it currently complies with this provision and has done so even in the absence of this proposed modification of the Commission's rules. However, Sprint argued, a Commission requirement that automated menus be structured in a specific manner can severely impair the flexibility needed to meet competitive challenges. Sprint noted that an increasingly competitive telecommunications market will protect consumers from automated menus at variance with customer expectations. Sprint asserted that additional regulation that prescribes how a company structures its menu is a step in the wrong direction and is clearly unwarranted.

VERIZON: Verizon maintained that callers dialing "0" today reach an operator. Verizon noted that this requirement should therefore not apply to callers dialing operator "0" because these callers have purposefully already dialed "0" to reach an operator. Verizon noted that advising them to again dial zero makes little sense. Similarly, Verizon argued, the requirement should not apply to calls to DA. Verizon noted that, at present, callers dialing DA also reach an operator and therefore, an advisory to press "0" will simply confuse customers. Verizon stated that in the case of either "0" or DA calls, requiring customers to listen to an audio advisory to dial "0" to reach an operator can only serve to delay the time it takes for a customer to reach an operator and is counterproductive to providing prompt and efficient service. Verizon maintained that, even if an IVR system is used to provide DA or "0" calls, the requirement should be modified to state that no explicit advice is required if the company's service is designed to automatically default the customer's call to an operator for assistance.

REPLY COMMENTS

BELLSOUTH: BellSouth noted that in its initial comments, it recommended that this requirement be removed. BellSouth commented that several other Industry Members agreed with BellSouth. For instance, BellSouth maintained, AT&T stated that it would “not be able to comply with this measure if required by the Commission without significant capital expenditures to change existing systems.” BellSouth observed that Concord noted that, consistent with BellSouth’s initial comments, “an overly aggressive notification requirement that a caller can access an operator immediately would unintentionally subvert the purpose and functioning of the ACD system without improving customer service.” BellSouth stated that it concurs with Concord’s contention that such a requirement could actually harm the level of service “by keeping live operators tied up routing calls to other departments that could be efficiently handled by the ACD system while callers with more complicated problems have to wait for service.” BellSouth argued that routing a customer to a service representative who cannot handle the customer’s problem or question is not an improvement in customer service.

BellSouth noted that, as it states in its answertime discussion in its rely comments, competition will apply the appropriate amount of discipline on telephone company customer service systems. BellSouth asserted that if consumer frustration with a company’s ACD system is great enough to prompt those consumers to leave their provider for a competitor, that provider will be forced to alter its systems to address that issue. BellSouth argued that there is no evidence in this record regarding actual consumer complaints about the placement of the “zero out” option with BellSouth’s ACD system. BellSouth maintained that the Commission should, therefore, eliminate this requirement from Rule R9-8(f).

CONCORD: Concord stated that it believes that the current requirement could substantially reduce the value of ACD systems, which are designed to route customers to the appropriate departments best able to address their concerns in the shortest possible time. Concord noted that it is in a situation similar to BellSouth in that it has specialized representatives trained to handle different matters. Concord explained that if customers are implicitly encouraged to “zero out” of the ACD system, then the routing of calls and the ability to respond to calls promptly and efficiently will be inhibited. Concord noted that the Public Staff appears to be concerned about customer interaction with IVR systems where a customer “converses” with the system to achieve the customer’s desired goals. Concord maintained it is important to note that these systems are not the same as ACD systems, which only serve to route customer calls by means of automated menus. Concord asserted that while ACD systems are in common use by many industries, including many telephone companies, the use of IVR systems is much less common. Finally, Concord commented that, like AT&T, Concord would be required to incur substantial costs to make the system alterations necessary to comply with this requirement.

PUBLIC STAFF: The Public Staff noted that AT&T contended that consumers already know they can press “0” within a menu. The Public Staff disagreed. The Public Staff

commented that many residence customers who are not accustomed to dealing with menus tend to respond only to the options presented to them. The Public Staff stated that if the “press 0 for an operator” option is not explicitly announced, those customers will not consider that to be an option. The Public Staff maintained that BellSouth’s menu does not allow callers access to the “0” option to reach a live representative until callers have listened to its entire IVR menu. The Public Staff noted that if the “press 0” option were available, it would take a customer less time to press “0”, wait 30 seconds in the queue, and then have a representative transfer him to the correct representative than to listen to the entire menu.

The Public Staff commented that Verizon argued that a “0” opt-out option should not be required for operator and DA calls. The Public Staff argued that the proposed opt-out requirement would only apply if the “0” and DA menus were over 30 seconds long.

The Public Staff noted that Concord contended that an “overly aggressive” requirement that a caller be notified that he can access an operator immediately could unintentionally subvert the purpose and functioning of the ACD system. The Public Staff stated that it does not believe that a company with a simple and effective IVR message would be negatively impacted by including the “0” option. The Public Staff asserted that if a company has a user-friendly IVR, callers will utilize the options offered by the menu. The Public Staff opined that callers who do not wish to remain in the IVR should be able to quickly exit and be transferred to a live representative. The Public Staff maintained that only explicit advice within the menu can assure that the customer is aware of that option.

DISCUSSION

The Commission notes that this issue concerning whether Rule R9-8(f) should include a requirement that callers to operator “0”, directory assistance, business office, or repair service be explicitly advised that they may press “0” at any time during the call was not addressed in the Commission’s *December 27, 2002 Order*. In fact, this is the first time this issue has been presented to the Commission in this docket. Apparently, as the Parties were negotiating language to include in the general considerations section on answertimes, the Parties disagreed on inserting this requirement.

AT&T, BellSouth, Concord, Sprint, and Verizon argued that this requirement should be removed; ALLTEL and Citizens did not oppose this requirement; Lexcom, MCI, MebTel, QuantumShift, and Randolph did not take a position on the issue; and the Public Staff asserted that the requirement should not be removed. AT&T claimed that customers are used to recorded menus and are already aware of this option. BellSouth fears that customers will hit “0” too quickly, reach a service representative that cannot help them, and will be confused and frustrated when they are transferred to the proper call center best able to assist them. Concord maintained that this requirement could subvert the purpose and functioning of ACD systems. Sprint argued that competitive forces would adequately protect customers from unsatisfactory automated menus. Finally, Verizon maintained that for Operator “0” and DA calls, telling customers they

may dial "0" at any time will confuse them since these calls are routed directly to an operator for assistance.

The Commission notes, as did the Public Staff, that the proposed requirement is only for menus lasting more than 30 seconds. However, the Commission believes that a more appropriate timeframe would be 45 seconds. Therefore, the Commission believes that 45 seconds is an appropriate time limit in which carriers can restrict the choices in a menu, and in the alternative, be required to inform a customer that he can dial "0" at any time to be transferred to a live attendant. The Commission believes that this 45 second exclusion adequately addresses the concerns raised by AT&T, BellSouth, Concord, Sprint, and Verizon. The Commission believes that customers should be informed that they can reach a live attendant if a company's menu lasts for longer than 45 seconds.

CONCLUSIONS: The Commission concludes that it is appropriate to include a requirement in Rule R9-8(f) that "callers to operator '0', directory assistance, business office, and repair service must be explicitly advised that they may press '0' at any time during the call and have the call transferred to a live attendant if the respective menus exceed 45 seconds."

UNRESOLVED ISSUE NO. 4: Is the requirement in R9-8(g) Measure 7 that "live business office representatives are expected to be available to handle incoming calls from North Carolina for a minimum of nine hours per day Monday through Friday, excluding company holidays" necessary?

POSITIONS OF PARTIES

ALLTEL: ALLTEL does not oppose imposition of this requirement.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: As a practical matter, BellSouth has no problem with this requirement since its hours exceed the requirement. However, introducing a rule to manage the hours that a company must be open is simply increased regulation which is completely unnecessary in a competitive environment. Customers who are unhappy with a company's call center hours are free to find another firm whose hours are more to their liking.

CITIZENS: Citizens does not oppose imposition of this requirement.

CONCORD: Concord did not take a position on this issue.

LEXCOM: Lexcom's normal operations meet these standards.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: The requirement in Rule R9-8(g) Measure 7 that “Live business office representatives are expected to be available to handle incoming calls from North Carolina for a minimum of nine hours per day Monday through Friday, excluding company holidays” is necessary.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph did not take a position on this issue.

SPRINT: Although Sprint does not agree that the Commission should dictate the hours of operation for call centers, Sprint has not opposed such a provision in the Commission’s Rule R9-8 in hopes that by doing so a compromise resolution could be reached in this proceeding.

VERIZON: No.

INITIAL COMMENTS

PUBLIC STAFF: The Public Staff stated that it believes that this requirement is necessary to ensure that the companies continue to have representatives available for nine hours a day, Monday through Friday. The Public Staff opined that, with the budget cutting that is rife throughout the telecommunications industry, the Public Staff fears that a company might cut the hours live representatives are available, thereby limiting the types of service available to customers. The Public Staff maintained that, while computerized systems are helpful additions to a company’s customer service options, they can never totally replace the functions of a live business office representative. Moreover, the Public Staff asserted, there are a number of customers uncomfortable or unfamiliar with IVRs who prefer to speak to live representatives. The Public Staff stated that it is its understanding that all companies currently meet this requirement.

The Public Staff asserted that the requirement in Rule R9-8(g) Measure 7 that “Live business office representatives are expected to be available to handle incoming calls from North Carolina for a minimum of nine hours per day Monday through Friday, excluding company holidays” is not unduly burdensome and is necessary.

SPRINT: Sprint noted that, while it currently complies with this provision, Commission requirements for specific hours of operation hamper flexibility in an industry that is being faced with ever increasing levels of competition and change. Sprint asserted that a company should be free to allocate its limited resources in a manner consistent with changing customer expectations. Sprint argued that additional regulation that goes so far as to prescribe hours of operation is a step in the wrong direction and is excessive. Sprint opined that as competition has grown, the need for telecommunications companies to provide services that meet customer expectations in order to keep and

maintain customers has become more than sufficient to motivate the desired accessibility.

VERIZON: Verizon stated that this requirement is unnecessary as it reflects standard business operating hours. Verizon noted that it is currently meeting this requirement.

REPLY COMMENTS

No party filed reply comments on this issue.

DISCUSSION

The Commission notes that this issue concerning whether Rule R9-8(g) Measure 7 should include a requirement that live business office representatives are expected to be available to handle incoming calls from North Carolina for a minimum of nine hours per day Monday through Friday, excluding company holidays was not addressed in the Commission's *December 27, 2002 Order*. In fact, this is the first time this issue has been presented to the Commission in this docket. Apparently, as the Parties were negotiating language to reflect the measurement procedures for Business Office Answer time, the Parties disagreed on inserting this requirement.

The Commission notes that ALLTEL, Citizens, Lexcom, and Sprint did not oppose this requirement; AT&T, Concord, MCI, MebTel, QuantumShift, and Randolph did not take a position on this issue; BellSouth stated that its hours exceed the requirement, but BellSouth is against increased regulation; Verizon opposed the requirement; and the Public Staff supported the requirement. The Commission notes that no party stated that it could not meet this requirement with its current operational hours. Further, the Commission notes that the only objection to this requirement is that it represents increased regulation.

The Commission does not believe that the imposition of this requirement is excessive or burdensome; in fact, the companies filing comments noted that they currently meet this requirement. Further, the Commission agrees with the Public Staff that this requirement is necessary to ensure that companies continue to have live representatives available to assist customers for nine hours a day, Monday through Friday, excluding company holidays. Therefore, the Commission concludes that it is appropriate to include the requirement in Rule R9-8(g) Measure 7 that live business office representatives are expected to be available to handle incoming calls from North Carolina for a minimum of nine hours per day Monday through Friday, excluding company holidays.

CONCLUSIONS: The Commission concludes that it is appropriate to include the requirement in Rule R9-8(g) Measure 7 that live business office representatives are expected to be available to handle incoming calls from North Carolina for a minimum of nine hours per day Monday through Friday, excluding company holidays.

UNRESOLVED ISSUE NO. 5: Is the requirement in R9-8(g) Measure 8 that a live operator be available 24 hours a day, seven days a week to answer repair calls necessary?

POSITIONS OF PARTIES

ALLTEL: ALLTEL does not object to the imposition of this requirement.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: BellSouth's repair service representatives are available 24 hours a day, seven days a week. However, BellSouth finds this requirement to be unnecessary in a competitive environment.

CITIZENS: Citizens did not take a position on this issue.

CONCORD: Concord did not take a position on this issue.

LEXCOM: Lexcom provides this service now and has no issues with the objective.

MCI: MCI did not take a position on this issue.

MEBTEL: No.

PUBLIC STAFF: The requirement in Rule R9-8(g) Measure 8 that a live operator be available 24 hours a day, seven days a week to answer repair calls is necessary.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: No.

SPRINT: Although Sprint does not agree that the Commission should dictate the hours of operation for call centers, Sprint has not opposed such a provision in the Commission's Rule R9-8 in hopes that by doing so a compromise could be reached in this proceeding.

VERIZON: No.

INITIAL COMMENTS

LEXCOM: Lexcom believes that it is important for customers to have access to repair service 24/7.

MEBTEL: MebTel stated that it provides 24/7 repair call coverage, but small telephone companies currently providing adequate coverage should not be forced to incur the expense of implementing this new requirement. MebTel maintained that, provided that

there is no history of service issues or customer complaints, a voice mailbox to handle after hour repair calls is sufficient for a small company.

PUBLIC STAFF: The Public Staff stated that it believes that this requirement is necessary for the timely provision of adequate repair service. The Public Staff maintained that a customer experiencing service problems may need to speak directly to a live attendant to describe the nature of the problems or to provide specific details, such as location information. The Public Staff opined that a live operator may also be able to give the customer information or guidance regarding the outage. Further, the Public Staff asserted, if there is an outage that could be life threatening (such as service to a hospital) or one that affects a large number of customers (such as a cable cut), the Public Staff believes that the affected company would want to be informed of this outage as soon as possible, so that repairs may be promptly initiated.

The Public Staff stated that it is its understanding that the only party that opposes this requirement is Randolph Telephone Company, which uses an answering machine for after-hours repair calls. The Public Staff asserted that it would not be unduly burdensome or expensive for a small company to employ an answering service to receive after-hours repair calls or to have the calls transferred to the home or wireless telephone of an on-call employee.

The Public Staff argued that the requirement in Rule R9-8(g) Measure 8 that a live operator be available 24 hours a day, seven days a week to answer repair calls is reasonable and necessary.

RANDOLPH: Randolph commented that it is a small company with only one exchange and less than 4,900 access lines. Randolph noted that it currently uses a voice mail box to handle after hour repair calls. Randolph stated that it has used this system for years and has always met service objectives for repairing out-of-service troubles within 24 hours. Randolph argued that there is no evidence that the current process is not working, and Randolph has received no customer complaints concerning the current process; therefore, Randolph does not believe it should be forced to incur the expense of either staffing for this new requirement or outsourcing to a third party provider. Randolph maintained that there is also no evidence that utilizing a third party provider would improve upon Randolph's current process.

SPRINT: Sprint noted that it currently complies with this provision and has done so in the absence of the proposed Commission rule. Sprint argued that a Commission requirement for specific hours of operation will hamper flexibility in an industry that is being faced with increasing levels of competition and change. Sprint asserted that a company should be free to allocate its limited resources in a manner consistent with customer expectations which change over time. Sprint opined that additional regulation that goes so far as to prescribe hours of operation is a step in the wrong direction and is not warranted when the industry has made it a practice to provide live repair service operators 24 hours a day, seven days a week. Sprint noted that an increasingly competitive telecommunications market provides the incentives for telecommunications

companies to innovate in providing services that meet customer expectations in order to keep and maintain customers. Sprint argued that additional regulation is simply not necessary and may foreclose development of more efficient alternatives in the future.

VERIZON: Verizon stated that, although it currently is meeting this requirement, it is too restrictive and unnecessary in today's competitive environment. Verizon noted that, given that competition will motivate companies to respond rapidly and efficiently to customer demands and preferences, there is no need to dictate the type of procedure (e.g., 24-hour live operator) that carriers must use in responding to customer calls.

REPLY COMMENTS

RANDOLPH: Randolph asserted that it has only one exchange and has less than 4,900 access lines. Randolph noted that it currently uses a voice mail system to handle after hour repair calls. Randolph stated that it has used this system for years and has always met service objectives for repairing out-of-service troubles within 24 hours. Randolph maintained that the Public Staff believes that contracting out to a service bureau is necessary to provide adequate repair service. Randolph argued that there is nothing in the record to support this unnecessary change in regulation.

Randolph noted that, when one of its customers experiences a service problem after hours, they dial the business office number and are forwarded to a voice mail system. Randolph stated that the customer can push "2" to leave a message for the business office; push "3" to leave a message for repair service; or, if the customer deems it an emergency, push "0". Randolph maintained that the customer is then instructed to leave a detailed message including their name and telephone number. Randolph commented that the person on-call checks the repair mail system at specified intervals throughout the night. Randolph stated that, if the customer leaves a message on the emergency mail system, it automatically pages the person on-call for immediate response.

Randolph noted that customers dialing into a service bureau would be connected to a representative who has an instruction sheet to follow and no knowledge whatsoever about Randolph or its service area. Randolph argued that the on-call person would still be required to call in and check with the service bureau for any calls received and would be paged if an emergency existed. Randolph asserted that it does not believe this extra step would improve the repair service it currently provides to its customers and that the Public Staff has not shown in its comments the necessity for making this change, only its belief that somehow this would improve Randolph's response to after-hour repair calls. Randolph, therefore, maintained that it does not believe this new requirement and expense should be imposed.

DISCUSSION

The Commission notes that this issue concerning whether Rule R9-8(g) Measure 8 should include a requirement that a live operator be available 24 hours a

day, seven days a week to answer repair calls was not addressed in the Commission's *December 27, 2002 Order*. In fact, this is the first time this issue has been presented to the Commission in this docket. Apparently, as the Parties were negotiating language to reflect the measurement procedures for Repair Service Answer time, the Parties disagreed on inserting this requirement.

The Commission notes that ALLTEL and Lexcom did not oppose this requirement; AT&T, Citizens, Concord, MCI, and QuantumShift did not take a position on this issue; BellSouth, MebTel, Sprint, and Verizon noted that they currently met this requirement but argued that it represents increased and unnecessary regulation which should not be adopted; Randolph opposed the requirement; and the Public Staff supported the requirement. The Commission notes that Randolph was the only party which stated that it could not meet this requirement with its current repair service procedures. Randolph explained that it currently uses a voice mail box to handle after hour repair calls and that there is no evidence that its current process is not working.

Based on the comments filed by Randolph, the Commission believes that it is appropriate for this issue to make allowances for companies providing service to fewer than 10,000 access lines in North Carolina. Therefore, the Commission concludes that it is appropriate to include the requirement in Rule R9-8(g) Measure 8 that carriers with 10,000 or more access lines have a live operator available 24 hours a day, seven days a week to answer repair calls.

CONCLUSIONS: The Commission concludes that it is appropriate to include the requirement in Rule R9-8(g) Measure 8 that carriers with 10,000 or more access lines have a live operator available 24 hours a day, seven days a week to answer repair calls.

UNRESOLVED ISSUE NO. 6: Is it necessary that the reports cover the first to the last day of the calendar month in Measures 9 and 10 in R9-8(g), or is it sufficient if the reports cover a preset 30 day period that is not tied to the first and last day of the calendar month?

POSITIONS OF PARTIES

ALLTEL: ALLTEL supports the establishment of a consistent 30 day reporting period by the company that would parallel a calendar month reporting period; however, companies should not have to reconfigure and reprogram their systems solely to generate reports tied to the first and last day of the calendar month.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: BellSouth's reports are built on the calendar month.

CITIZENS: Citizens did not take a position on this issue.

CONCORD: Concord did not take a position on this issue.

LEXCOM: Currently Lexcom reports by calendar month so it has no issue with the objective.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: The reports required in Measures 9 and 10 in Rule R9-8(g) should cover the first through the last day of the calendar month.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph did not take a position on this issue.

SPRINT: Reports should cover the first to the last day of the calendar month.

VERIZON: Reports should be made on a calendar month basis.

INITIAL COMMENTS

ALLTEL: ALLTEL stated that, by allowing the company to report data over a consistent 30-day (or 28 or 31 days, as it parallels the reporting month) reporting period, yet giving the company the flexibility to set the report period, the same results sought by the Commission will be achieved. For example, ALLTEL noted, if it reports December results from 11/26/03 to 12/25/03 and then reports January results from 12/26/03 to 1/25/04, there is no meaningful difference than if the data had been reported for the periods 12/1 – 12/31/03 and 1/1 – 1/31/04. ALLTEL maintained that it does not believe that the Commission should adopt a rigid standard with regard to the reporting period that would require costly software enhancements or extensive administration in order to achieve uniform reporting procedures that would be of no meaningful benefit to consumers.

LEXCOM: Lexcom stated that, while it reports already by calendar month, it should not matter as long as the reported month includes at least all billing cycles for the last 30 days.

PUBLIC STAFF: The Public Staff argued that the purpose of this requirement is to ensure uniform reporting. The Public Staff maintained that, in reviewing the service quality reports, the Public Staff often compares results from different companies to determine whether a problem is specific to one company or affects the entire industry. For instance, the Public Staff commented, in evaluating a company's Force Majeure waiver request, the Public Staff might look at other companies' reports to determine the geographic area affected by a storm, as well as the extent to which the other companies' service was impacted. The Public Staff noted that if the companies do not use the same reporting period, such a comparison would be difficult, if not impossible.

The Public Staff stated that it believes that it is necessary for purposes of uniform comparisons that the reports cover the first to the last day of the calendar month in Measures 9 and 10 in Rule R9-8(g).

SPRINT: Sprint noted that simplified consistency in reporting will promote administrative ease for all parties.

VERIZON: Verizon stated that it takes no position on whether it is necessary for all companies to file reports covering the first to the last day of the calendar month. However, Verizon noted, it should be permitted to continue to file reports on that basis because its internal systems and processes are designed to produce reports on a calendar-month basis. Verizon maintained that it would be resource intensive to modify these internal systems and processes, and such modifications would not deliver any appreciable benefits.

REPLY COMMENTS

ALLTEL: ALLTEL asserted that the Public Staff seeks imposition of a requirement that ILECs' data reporting periods be tied to the calendar month, i.e., from the last day of each month. ALLTEL noted that, in order to accommodate its data collection systems, ALLTEL has requested that the rule be written to allow a reporting company sufficient flexibility to establish a consistent analogous reporting period that would parallel a calendar month, without necessarily having to start on the first day and on the last day of the month.

ALLTEL stated that, as it noted in its initial comments, by allowing a company to report its data for a consistent 30 day (or 28 or 31 day period, as appropriate to parallel the applicable monthly reporting period), a company would have the flexibility to establish a report period yielding data that is effectively identical to the data yielded by the Public Staff's version of the measure. However, ALLTEL noted that this flexibility would spare companies the need to reconfigure and reprogram systems solely to generate data collection and reports tied to the first and last day of the calendar month.

ALLTEL maintained that the Company would still have a uniform reporting period and there would be no material difference in the quality or significance of the data produced. ALLTEL noted that if, for example, for the December reporting period, ALLTEL was to report the results of its service from November 26 through the following December 25, instead of reporting from December 1 through December 31, there would be no meaningful difference between the data collected for the analogous 31 day period (11/26-12/25), and the equivalent data collected from December 1 through December 31. ALLTEL stated that it understands that not all companies are reporting today on a standardized calendar month basis, and this does not appear to have caused any problem for Public Staff and Commission in reviewing and analyzing the reported data.

ALLTEL argued that so long as the reporting company utilizes data from an equivalent length reporting period which closely parallels the subject month, there will simply be no real difference in the value of the data. ALLTEL maintained that there is insufficient justification for requiring costly software enhancements or additional administrative costs in order to achieve totally uniform comparative reporting by all companies; particularly not for the sole proffered reason of allowing perfect comparison of various companies' reports for a given period. ALLTEL asserted that requiring calendar month reporting does not advance any discernable public interest or provide meaningful benefit to any interested party.

ALLTEL noted that it appreciates and respects the Commission and Public Staff objectives of insuring that North Carolina citizens continue to receive high quality telecommunication services. In this regard, ALLTEL noted again that it has consistently met the Commission's existing service objective standards. ALLTEL maintained that, because of the legitimate question as to the extent of any additional benefit which might accrue to the public as a result of the imposition of the requirement to report on a calendar month basis, rather than an equivalent closely analogous reporting period, ALLTEL requested that the Commission grant ILECs the flexibility to report their data in a way that is functionally equivalent to reporting based on the calendar month.

PUBLIC STAFF: The Public Staff maintained that the monthly reporting requirement for initial troubles per 100 access lines dates back to a January 15, 1971 memorandum. The Public Staff asserted that, although the Commission did not specify that the reporting periods should be "calendar" months, it is the normal meaning of the term.

The Public Staff noted that ALLTEL contended that it will incur reprogramming expense to convert to a calendar month reporting system. However, the Public Staff argued that this expense, which ALLTEL has not quantified, should be a one-time expense. The Public Staff asserted that the Commission should not alter the rule to accept ALLTEL's unique trouble reporting schedules, as this will make it almost impossible to compare trouble report performance among the companies.

DISCUSSION

The Commission notes that this issue concerning whether Rule R9-8(g) Measures 9 and 10 should require that the reports cover the first to the last day of the calendar month was addressed in the Commission's *December 27, 2002 Order*.

The Commission notes that BellSouth and Lexcom did not oppose this requirement; AT&T, Citizens, Concord, MCI, MebTel, QuantumShift, and Randolph did not take a position on this issue; the Public Staff, Sprint, and Verizon supported a calendar month reporting period; and ALLTEL was opposed to such a reporting period. The Commission notes that ALLTEL was the only party which was opposed to reporting on a calendar month basis. ALLTEL argued that, so long as the reporting company utilizes data from an equivalent length reporting period which closely parallels the subject month, there will simply be no real difference in the value of the data. ALLTEL

further maintained that there is insufficient justification for requiring costly software enhancements or the incurrence of additional administrative costs in order to achieve totally uniform comparative reporting by all companies, particularly not for the sole proffered reason of allowing perfect comparison of various companies' reports for a given period. ALLTEL asserted that requiring calendar month reporting does not advance any discernable public interest or provide meaningful benefit to any interested party.

The Commission agrees with the Public Staff that the purpose of a calendar month basis reporting requirement is to ensure uniform reporting. Further, the Commission believes it is essential to have companies report on the same timeframe and that a calendar month basis is a normal reporting period. The Commission also notes that ALLTEL is the only party to oppose this requirement and the Commission agrees with the Public Staff that ALLTEL has not quantified its reprogramming expense and that the expense should be a one-time expense.

Therefore, the Commission finds it appropriate to require that reports for Measures 9 and 10 in Rule R9-8(g) cover the first to the last day of the calendar month as initially ordered by the Commission in its *December 27, 2002 Order*.

CONCLUSIONS: The Commission concludes that reports for Measures 9 and 10 in Rule R9-8(g) should cover the first to the last day of the calendar month consistent with the Commission's finding in its *December 27, 2002 Order*.

UNRESOLVED ISSUE NO. 7: Should Measures 9-14 in R9-8(g) exclude nonregulated equipment or services from the calculations?

POSITIONS OF PARTIES

ALLTEL: Yes.

AT&T: Yes. Measures 9 - 14 of R9-8(g) should not include nonregulated equipment or services.

BELLSOUTH: Yes.

CITIZENS: Yes. Citizens believes that Measures 9-14 should exclude nonregulated equipment or services from the calculations.

CONCORD: Yes.

LEXCOM: No.

MCI: MCI did not take a position on this issue.

MEBTEL: No.

PUBLIC STAFF: Yes. Companies should exclude nonregulated equipment or services from their calculations of Measures 9 - 14 in Rule R9-8(g).

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: No.

SPRINT: Yes. Measures 9-14 in Rule R9-8(g) should exclude nonregulated equipment and services from the calculations.

VERIZON: Yes.

INITIAL COMMENTS

AT&T: AT&T maintained that there is no reason to include equipment and services (i.e., inside wire, terminal equipment) that are not regulated by the Commission in the computation of any service quality measures. AT&T noted that if it were required to comply with this requirement, significant capital expenditures would be required to change existing reporting systems during a time when AT&T, like other CLPs, is faced with a reduction of capital resources. AT&T stated that it has not been required to provide information on nonregulated services as part of any service quality measures. AT&T further noted that such a requirement would be extremely burdensome and would not provide the Commission with beneficial information regarding whether or not a consumer's service has been successfully installed.

BELLSOUTH: BellSouth asserted that, by definition, these network measurements are obviously associated with BellSouth's regulated common carrier business. BellSouth stated that it has no public utility obligation to maintain or concern itself with a customer's unregulated CPE, which can be purchased from a myriad of providers, and that the Commission cannot promulgate rules that either directly or indirectly regulate either an unregulated line of business or BellSouth's treatment of an unregulated portion of a customer's telephone service. In addition, BellSouth stated that its systems and reports are set up to exclude this information today and it would require significant and unnecessary expense for BellSouth to re-design these systems to include nonregulated equipment or services in these calculations.

CONCORD: Concord stated that, by definition, nonregulated services and equipment are not matters within the control or jurisdiction of the Commission. As such, Concord maintained, reporting of service quality measurements for these services and equipment is not a matter properly ordered by the Commission. Concord noted that the only exception that might be appropriate is in the case where a provider cannot readily distinguish between regulated and nonregulated equipment and services for purposes of reporting, in which case it may be appropriate to permit combined reporting.

LEXCOM: Lexcom noted that on Measures 9 through 11, Lexcom uses one call-in number for all repair calls. Lexcom stated that it does not distinguish or discriminate

between these categories of calls. Lexcom argued that to try and segregate these calls would require, at the least, multiple call-in numbers. Lexcom maintained that this would be confusing to its customers, as well as add additional expense. Lexcom noted that for Measures 12 through 14, Lexcom classifies a service order that contains both regulated and nonregulated items as a regulated order; orders which contain only nonregulated items are classified as nonregulated orders.

MEBTEL: MebTel maintained that its current service order system does not have the capability to exclude nonregulated service orders. MebTel stated that segregation of nonregulated equipment and services would require either an unduly burdensome manual process or significant expense to reprogram its systems and re-train its service representatives. MebTel asserted that it is a small company, and it is much more efficient to train its representatives to take all incoming calls and work within one unified service order system, regardless of distinctions between regulated and nonregulated service inquiries. MebTel stated that the changes necessary to exclude nonregulated service orders would require significant time and expense, create confusion, and negatively impact service as a result of changes to longstanding business practices.

PUBLIC STAFF: The Public Staff noted that in the Commission's *December 27, 2002 Order*, the Commission adopted language in Rule R9-8 requiring companies to exclude nonregulated equipment or services from their calculations of Measures 12-17. The Public Staff stated that it believes that it is logical to exclude results for equipment and services over which the Commission has no jurisdiction. The Public Staff noted that it is also important that the Commission and Public Staff receive service quality reports that measure the same things. The Public Staff opined that it would be impossible to compare service quality across North Carolina if one company reports service quality results reflecting both its regulated and nonregulated equipment and services, while another company only reports results associated with its regulated equipment and services.

The Public Staff argued that Measures 9 through 14 in Rule R9-8(g) should exclude nonregulated equipment and services.

RANDOLPH: Randolph noted that its current service order system does not have the capability of excluding nonregulated service orders from either the numerator or denominator of the equation. Randolph stated that, in order to exclude nonregulated service orders, Randolph would either have to manually inspect and tally each order received during the month or incur significant programming costs to automate the process with little corresponding benefit to its ratepayers.

SPRINT: Sprint stated that nonregulated equipment and services are beyond the jurisdiction of the Commission and should therefore be excluded from service quality reports.

VERIZON: Verizon stated that nonregulated equipment and services should be excluded from the calculations. Verizon argued that nonregulated equipment and

services, by definition, are free of regulatory oversight, and thus including them in the regulatory reports would be improper. Verizon stated that unnecessary regulation of these items will interfere with the operation of market forces and needlessly expend resources monitoring items that are more efficiently regulated by competition. Accordingly, Verizon maintained, only regulated services should be included in the calculations.

REPLY COMMENTS

No party filed reply comments on this issue.

DISCUSSION

The Commission notes that this issue concerning whether Rule R9-8(g) Measures 9 through 14 should exclude nonregulated equipment or services from the calculations was addressed in the Commission's *December 27, 2002 Order*. In the *December 27, 2002 Order*, the Commission found that for Initial Customer Trouble Reports, Repeat Reports, Out-of-Service Troubles Cleared Within 24 Hours, Regular Service Orders Completed Within 5 Working Days, New Service Installation Appointments Not Met for Company Reasons, and Held Orders Not Completed Within 30 Days, nonregulated equipment, products, and services should be excluded from the calculations. In fact, at least for Initial Customer Trouble Reports, both the ITF and the Public Staff had recommended that the calculation exclude nonregulated services.

The Commission notes that ALLTEL, AT&T, BellSouth, Citizens, Concord, the Public Staff, Sprint, and Verizon support excluding nonregulated equipment and services; MCI and QuantumShift did not take a position on this issue; and Lexcom, MebTel, and Randolph recommend that nonregulated equipment and services be included in the calculations. Lexcom, MebTel, and Randolph explained that their current systems do not distinguish between regulated and nonregulated equipment and services.

The Commission agrees with the Public Staff that it is logical to exclude all nonregulated equipment and services from the calculation of service standards. The Commission also agrees that it is important that the service quality reports submitted by the companies measure the same thing. However, to address the fact that Lexcom, MebTel, and Randolph have indicated that their current systems do not distinguish between regulated and nonregulated equipment and services, the Commission finds it appropriate for this requirement to allow carriers to file for a waiver for good cause shown.

Therefore, the Commission finds it appropriate to continue to find that Measures 9 through 14 in Rule R9-8(g) should exclude nonregulated equipment and services from the calculations, with the caveat that carriers may request a waiver of this requirement from the Commission and the Commission may grant such waiver requests for good cause shown.

CONCLUSIONS: The Commission continues to find that Measures 9 through 14 in Rule R9-8(g) should exclude nonregulated equipment and services from the calculations. However, carriers may request a waiver of this requirement from the Commission and the Commission may grant such waiver requests for good cause shown.

UNRESOLVED ISSUE NO. 8: Should the average speed of answer (ASA) for business office and repair service be 30 or 60 seconds?

POSITIONS OF PARTIES

ALLTEL: ALLTEL supports the adoption of an average speed of answer standard and does not object to the implementation of either standard, as ALLTEL can satisfy either one.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: The average speed of answer should be 60 seconds.

CITIZENS: Citizens does not oppose a requirement that the average speed of answer for business office and repair be 30 seconds.

CONCORD: Concord did not take a position on this issue.

LEXCOM: Lexcom currently supports a 30 second answertime. However, it would not object to a 60 second answertime.

MCI: An average speed of answer for business office and repair service of 30 seconds engenders substantial costs and would limit competition. MCI recommends that the average speed of answer be 60 seconds.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: The average speed of answer for business office and repair service should be 30 seconds.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph did not take a position on this issue.

SPRINT: Telecommunications companies should not be held to answertime standards. No other category of state-regulated utilities in North Carolina of which Sprint is aware is held to such standards. Nevertheless, some telecommunications companies believe that a 60 second average speed of answer is appropriate while other ITF members have agreed to 30 seconds. A reasonable compromise alternative is a 45 second average speed of answer.

VERIZON: Verizon did not take a position on this issue.

INITIAL COMMENTS

ALLTEL: ALLTEL noted that, under an ASA standard, every call has an equal value for purposes of scoring service quality performance. ALLTEL stated that there is no answer time threshold that, once missed, devalues answering a call from a service level measurement perspective. ALLTEL maintained that under an ASA system, a company continues to be motivated to answer every call as quickly as possible. Thus, ALLTEL contended, an ASA standard would be just as effective in promoting the quickest possible answer.

BELLSOUTH: BellSouth stated that its position has not changed since its Motion for Reconsideration was filed on February 7, 2003 in this docket, where it discussed this matter in great detail. In summary, BellSouth noted, based on the study conducted by Georgetown Consulting, and the research conducted by Maritz Marketing Research, Inc., the ITF recommended 60 seconds to the Commission as an average industry standard. BellSouth commented that the average was based on a review of other states' standards plus customer surveys. BellSouth noted that adoption of the 60 second ASA would not place the Commission outside the mainstream of states that have established standards in this area. In fact, BellSouth maintained, 22 states have not established a business office answertime standard at all and 15 states have no repair office answertime standard. Further, BellSouth argued, changes in the general call center environment since the current answertime standards were established must be recognized. BellSouth commented that one would be hard pressed to call any business or governmental agency today and not be required to hold for some length of time. BellSouth asserted that, considering the extraordinary changes to BellSouth's business environment (which demand that service representatives engage in much longer discussions with customers) as well as changes to the call center environment as a whole, the Commission should find 60 seconds to be an excellent answertime standard.

MCI: MCI noted that it appreciates the willingness of the Commission and the Public Staff to listen to and address the concerns of all carriers, both CLPs and ILECs alike. MCI stated that it shares the concerns of the Commission and other interested parties in guaranteeing that this process will produce rules that ensure that the interests of North Carolina consumers are protected, while at the same time ensuring that North Carolina consumers have choice in their local telephone provider.

MCI noted that last year it launched competing residential local service – “The Neighborhood built by MCI” – in North Carolina and a number of other states. MCI stated that by using the unbundled network element-platform (UNE-P), the Neighborhood provides North Carolina residential and small business consumers with packages of local, intraLATA, and interLATA voice services, along with assortments of popular features. MCI noted that it now serves tens of thousands of North Carolinians with the Neighborhood, and more than 3 million mass markets customers nationally.

MCI commented that achieving the goal of effective and sustainable competition should be the lodestar of telecommunications regulation. MCI argued that competition is still in the embryonic stage in North Carolina, particularly for residential and small business customers. Thus, MCI asserted, the purpose of regulation is to act as a surrogate for marketplace regulation (i.e. competition) until such time as competition is sufficiently established. MCI maintained that, where competition does not exist, Commission regulation is necessary to protect the interests of consumers; as competition develops, there is less of a need for Commission regulation. MCI noted that the reality is that CLPs just entering the local telephone market in North Carolina are immediately subject to marketplace regulation. In other words, MCI stated, unless CLPs can provide services that are better in quality and price than those offered by incumbent monopolies, they will simply never attract customers. MCI argued that, with competition, a consumer should have the choice of going with the company that provides the level of service he or she seeks. MCI maintained that if a consumer does not need a high standard of service, and in return he or she receives a lower price, he or she should have that option. MCI argued that competition will create the impetus for carriers to offer customer service that will satisfy the consumer, or they will risk losing customers to another carrier that will meet that need. MCI opined that market forces will keep carriers providing customer service at levels that meet customer needs. MCI noted that regulation becomes unnecessary in this scenario.

Against this backdrop, MCI asserted, there remains a dispute in this docket concerning whether the ASA should be 30 seconds or 60 seconds. MCI noted that a 30 second ASA, particularly if it begins at the moment the call enters the queue leading to a live representative, requires many more representatives and means that at low volume times they sit idle, creating an inefficient and expensive situation for the carrier. Under these circumstances, MCI noted, the costs to achieve a 30 second ASA are extremely high, in the millions of dollars for a national company. MCI commented that, even with the best efforts to manage call volumes to achieve low ASAs, there may be unintended consequences. MCI stated that there may be unneeded pressure to move “through” the calls more quickly than desired to keep up with incidents like call volume “spikes” for example, which could cause reduced call handling satisfaction for consumers calling with more complex issues that could require additional attention. MCI maintained that consumers do not like to be kept waiting for longer than necessary, but when it is their turn for attention from the representative, they will expect efficient resolution to the extent needed to resolve their concern. MCI stated that carriers are training representatives and using call routing to provide that efficient and accurate resolution. By doing so, MCI commented, carriers reduce the chance and cost of a repeat call and an unsatisfied customer.

MCI argued that a 30 second ASA is an unrealistic standard in today’s marketplace, particularly when there are technological solutions being used today as well as ones under development in the industry, which will provide service that will make ASA an unnecessary and arbitrary measure. MCI asserted that today’s IVR units are being used in “smarter” ways to route the right customer to the right representative with the right information to resolve the customer’s concern accurately and efficiently. MCI

noted that customers are also using IVR to self-service their accounts at their convenience, 24 hours a day, seven days a week. MCI stated that the same is true of web-based customer service and email customer service.

MCI acknowledged and supported the business office and repair service measurement procedures. MCI noted that defining the way calls handled by automated menus or IVR should be included in the measure recognizes the value and widespread use and acceptance of this technology. At the same time, MCI argued, requiring a 30 second ASA is setting a standard that would be challenging and costly for a national carrier to comply with on a consistent basis. MCI recommended that the Commission not set service standards at unnecessarily low rates and allow carriers in the competitive marketplace to create innovative solutions.

PUBLIC STAFF: The Public Staff noted that, as the Commission is aware, the appropriate objective for answertime has been the most difficult issue in this docket. The Public Staff commented that the current standard requires that 90% of all calls to the business office or to repair be answered in 20 seconds. The Public Staff maintained that, based on calculations made by BellSouth a number of years ago, this standard translates to an ASA of 13 seconds. The Public Staff noted that all companies but one have been meeting the current standard or missing it very narrowly.

The Public Staff opined that going to an ASA of 30 seconds is a significant loosening of the current standard. The Public Staff noted that the proposed Rule R9-8 attached to the Joint Report recognizes changes in technology, especially the use of IVRs, and allows the companies wide latitude in determining how best to serve their customers. The Public Staff asserted that the proposed rule also allows companies that utilize IVRs to assume an answertime of one second for all calls handled entirely in the IVR. Thus, the Public Staff noted, if 30% of a company's calls were handled entirely within its IVR system, the ASA for the calls answered by a live operator would need to be 42 seconds to achieve an overall ASA of 30 seconds. The Public Staff commented that as a company improves its IVR so that even a greater percentage of calls are handled without the intervention of a live operator, the ASA for live operator calls could increase and the company could still meet the 30-second ASA standard.

The Public Staff stated that it believes that almost all companies currently meet a 30-second ASA standard, and only one company opposes it. The Public Staff maintained that further relaxing of the answertime standard would not be in the public interest and that the ASA for business office and repair service should be 30 seconds.

SPRINT: Sprint argued that the competitive nature of the telecommunications industry provides adequate incentives for companies to answer calls in timeframes that meet customer expectations. However, Sprint asserted that it has not opposed a 30 second average speed of answer with the inclusion of automated calls in the expectation that by doing so a compromise settlement could be reached in this proceeding. Sprint argued that it is illogical to hold a competitive industry to standards not required of industries that have virtually no competition at all. Sprint noted that the potential loss of customers

associated with the failure to meet customer expectations provides more than adequate incentive for telecommunications companies to answer customer calls in a timely manner. Sprint maintained that, perhaps, this requirement is a vestige of an earlier time, but, if it was ever necessary, it is no longer required because telecommunications competition is flourishing and customers have options that were not available in the past.

REPLY COMMENTS

BELLSOUTH: BellSouth noted that, in its initial comments, it recommended that the ASA for Business Office and Repair Service be 60 seconds. BellSouth stated that MCI filed extensive comments supporting the establishment of a 60-second ASA requirement for this measurement. In fact, BellSouth commented, this was the only issue on which MCI offered initial comments, which clearly indicates the seriousness of the issue to MCI.

BellSouth maintained that MCI noted that the “costs to achieve a 30-second ASA are extremely high, in the millions of dollars for a national company. This is an unnecessary and unrealistic requirement that will limit the amount of competition in the marketplace.” BellSouth pointed out that MCI noted that “a 30-second ASA is an unrealistic standard in today’s marketplace” (a point made by BellSouth in its initial comments) and that competition will “create the emphasis for carriers to offer customer service that will satisfy the customer, or they will risk losing customers to another carrier that will meet that need.” BellSouth asserted that it agrees wholeheartedly with MCI’s comments on this issue. BellSouth argued that business and residential customers in North Carolina clearly have a myriad of choices for their telecommunications needs. Indeed, BellSouth opined, MCI’s comments noted the success of its Neighborhood offering around the nation and within North Carolina for residential customers, and AT&T recently announced its widespread entry into the residential markets in this state. BellSouth asserted that carriers that require customers to wait an inordinate amount of time to conduct transactions via the telephone will quickly lose those customers to competitive alternatives.

BellSouth noted that Sprint’s initial comments on this issue correctly noted that the “competitive nature of the telecommunications industry provides adequate incentives for companies to answer calls in timeframes that meet customer expectations.” Echoing a point BellSouth has consistently made in this proceeding, BellSouth noted that Sprint observed: “It is illogical to hold a competitive industry [telecommunication] to standards not required of industries that have virtually no competition at all [rate-of-return regulated electric, gas, and water companies].” BellSouth argued that it is absurd for the Commission to single out the most competitive industry under its purview for imposition of any answertime measurement, when *de jure* monopolies such as electric and gas companies (whose customer literally has no choice of providers) have no answertime standards. For all the reasons previously stated and in its prior comments on this issue, BellSouth asked that, if the Commission insists upon the continuation of

an answertime measurement for business office and repair access, that standard should be set at 60 seconds ASA.

PUBLIC STAFF: The Public Staff noted that BellSouth contended that 60 seconds is an “excellent answertime standard” considering “extraordinary changes to BellSouth’s business environment (which demand that service representative engage in much longer discussions with customers) as well as changes to the call center environment as a whole.” The Public Staff asserted that there is no question that BellSouth’s business and call center environments have changed. Indeed, the Public Staff stated that it believes that answertime delays are related, in part, to an increased emphasis on marketing unregulated services such as voice mail and DSL and to responding to questions on features such as call waiting or caller ID. The Public Staff maintained that many of the non-POTS services that are available today did not exist when the “90% within 20 seconds” answertime standard was adopted by the Commission. However, the Public Staff noted that it does not believe the Commission can find much excellence in a 60 second ASA standard. The Public Staff argued that there is considerable difference between what customers have had to endure and come to expect and what they should be provided. The Public Staff maintained that many companies consistently meet the current standard, which equates to an ASA of less than 30 seconds. The Public Staff opined that a 30 second ASA standard recognizes changes such as the extensive use of IVRs without resulting in a significant diminution in service quality.

DISCUSSION

The Commission notes that in the *December 27, 2002 Order*, the Commission found it appropriate to retain the current answertime standard in Rule R9-8 for Business Office and Repair Service of 90% or more of calls answered within 20 seconds. However, the Commission also found it appropriate to adopt an absolute maximum answertime standard which the Commission noted would be established after a hearing on the matter.

It appears from the filings in this matter that none of the Parties supported the findings in the Commission’s *December 27, 2002 Order*. It does appear that the Parties have agreed that the standard for Business Office and Repair Service answertime should be an ASA, with BellSouth and MCI supporting 60 seconds and ALLTEL, Citizens, Lexcom, and the Public Staff supporting 30 seconds. AT&T, Concord, MebTel, QuantumShift, Randolph, and Verizon did not take a position on this issue. Sprint offered a compromise of 45 seconds. The Commission further notes that the Public Staff stated that, based on calculations made by BellSouth a number of years ago, the current 90% within 20 seconds standard translates to an ASA of 13 seconds. Therefore, the Commission observes, increasing the objective to an ASA of 30 seconds is **more than doubling** the current objective. Further, as the Public Staff noted, the proposed rule allows companies that utilize IVRs to assume an answertime of one second for all calls handled entirely within its IVR. Therefore, if a call is handled completely within the IVR and a one second answertime is assumed and another call is handled by a live operator, to meet the 30 second ASA, the live call would need to be

answered in 59 seconds (1 second + 59 seconds = 60 seconds / 2 calls = 30 seconds per call or an ASA of 30 seconds).

The Public Staff also noted that all companies but one have been meeting the current standard or missing it very narrowly. And again, adopting a 30 second ASA is more than doubling the current objective.

Although the Commission is not entirely persuaded that the decision in the *December 27, 2002 Order* to retain the 90% in 20 seconds standard plus an absolute maximum answer time should be altered, the Commission does realize that all of the Parties involved in this docket have agreed that an ASA should be utilized. The only issue between the Parties is whether the ASA should be 30 seconds or 60 seconds. BellSouth and MCI were the only parties that support a 60 second ASA, and the Commission was not persuaded by the comments of those two companies that a 60 second ASA is reasonable. The Commission believes that a 30 second ASA is entirely reasonable and appropriate.

Therefore, the Commission finds it appropriate to adopt a 30 second ASA for Business Office and Repair Service answer times.

CONCLUSIONS: The Commission finds it appropriate to adopt a 30 second ASA for Business Office and Repair Service answer times.

UNRESOLVED ISSUE NO. 9: In Measure 11 of R9-8(g), should the calculations for the Out-of-Service Troubles Cleared Within 24 Hours measure exclude Saturdays, Sundays, and holidays?

POSITIONS OF PARTIES

ALLTEL: Yes, the Commission should clarify that the time for calculating the Out-of-Service Troubles Cleared Within 24 Hours excludes reports received between 5:00 p.m. Saturday and 7:00 a.m. Monday or on holidays.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: BellSouth currently includes Saturdays, Sundays, and holidays.

CITIZENS: Citizens did not take a position on this issue.

CONCORD: Yes.

LEXCOM: Lexcom accepts a 24 hour out-of-service clear time.

MCI: MCI did not take a position on this issue.

MEBTEL: MEBTel did not take a position on this issue.

PUBLIC STAFF: The calculations for the Out-of-Service Troubles Cleared within 24 Hours measure should include results for Saturdays, Sundays, and holidays.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph did not take a position on this issue.

SPRINT: Sundays should be excluded from the calculations for the Out-of-Service Troubles Cleared within 24 Hours measure.

VERIZON: Yes.

INITIAL COMMENTS

ALLTEL: ALLTEL commented that it feels strongly that trouble reports received during the period between 5:00 p.m. Saturday and 7:00 a.m. Monday or on holidays should not be included in this measurement. ALLTEL noted that, during that part of the weekend, repair forces may not be dispatched immediately, depending on the availability of on-call weekend repair technicians. ALLTEL commented that, while the volume of these trouble reports received during this time is not significant, their inclusion could, in certain unusual circumstances such as an unexpected weekend event not rising to the level of a force majeure event, adversely and unfairly impact performance as to this standard for that month.

CONCORD: Concord noted that although many out-of-service customer situations are handled by Concord on Saturdays, Sundays, or holidays, Concord has only limited staff availability during these periods for these purposes. Concord maintained that the Commission's standards should recognize the legitimate differences between staff and service availability on working and nonworking days. Concord stated that by including these days in the Out-of-Service Troubles Cleared service quality requirement, the Commission will effectively be issuing a new, and much more stringent, service quality requirement on Concord. Concord argued that this requirement may require Concord to restructure its service employment arrangements and add significant new costs to Concord's provision of service. Concord submitted that no showing has been made that its customers are dissatisfied with its existing out-of-service procedures and, therefore, it is not appropriate for the Commission to impose this unilateral change in Concord's service procedures in this docket.

PUBLIC STAFF: The Public Staff noted that, as it previously stated with regard to Unresolved Issue No. 1, the Public Staff believes that the Out-of-Service Troubles Cleared Within 24 Hours measure is the most important of all the service quality measures. The Public Staff opined that, from the customers' perspective, out-of-service troubles are the same regardless of when they occur, and the companies should be expected to make out-of-service repairs every day of the year.

The Public Staff opined that if companies were allowed to exclude weekend and holiday performance from their out-of-service repair results, a customer could, for example, report an outage the Friday evening before Memorial Day, and his carrier could wait to restore service until the next Tuesday evening, a total of four calendar days, but still meet the standard in regard to that customer. The Public Staff maintained that moreover, since the standard for this measure is not 100%, but rather 95%, companies already have some flexibility in determining whether to require their repair forces to work on Saturdays, Sundays, and holidays.

The Public Staff argued that the calculations for the Out-of-Service Troubles Cleared within 24 Hours measure should include results for Saturdays, Sundays, and holidays.

SPRINT: Sprint noted that its service technicians have not generally worked out-of-service troubles on Sundays in the past. Sprint maintained that this practice has proven satisfactory, and there is no reason to change. If anything, Sprint opined, increasing competition should render such rules less, not more, necessary. Sprint noted that it does dispatch technicians to clear out-of-service troubles on any day, including Saturdays, Sundays and holidays, for medical and other emergency reasons and will continue to do so even with the Sunday exclusion.

VERIZON: Verizon stated that weekends and holidays should be excluded to account for the fact that staffing levels are lower during these time periods than during normal working hours. Verizon argued that requiring it to maintain the same workforce on weekends and holidays that it does during normal business hours would be resource intensive – at a time when the industry can ill afford to bear any unnecessary expense. Verizon asserted that the Commission should limit the calculation to business days to allow companies the flexibility to allocate their finite resources to endeavors that they believe will have a greater positive impact on customer satisfaction.

REPLY COMMENTS

ALLTEL: ALLTEL stated that, as indicated in its initial comments, it supports either the existing 95% standard or the lowering of that standard to 90%; provided that, if this standard remains at 95%, then the calculation of this measure should exclude trouble reports received between 5:00 p.m. on Saturday and 7:00 a.m. on Monday or on holidays. ALLTEL commented that trouble reports received by ALLTEL during the period between 5:00 p.m. on Saturday and 7:00 a.m. on Monday or on holidays may not be dispatched immediately, depending on the availability of on-call repair technicians. ALLTEL maintained that this would not be an issue if the Commission adopts the 90% standard; however, if the Commission maintains the 95% standard, then it could be.

ALLTEL noted that it currently handles emergency situations all day on Saturday, Sunday, and holidays. ALLTEL asserted that this capability addresses the unusual but potential scenarios proffered by the Public Staff in its comments, such as a cable cut. ALLTEL likewise meets the current 95% standard in Rule R9-8(a). ALLTEL noted that it also currently works regular trouble tickets received during the period, to the extent it

has technicians available during that period. ALLTEL maintained that any trouble reported between 5:00 p.m. on Saturday and 8:00 a.m. on Monday, or on a holiday, which is not resolved by Monday morning, will be handled before 8:00 a.m. Tuesday morning. ALLTEL stated that its concern is that the inclusion of these unresolved weekend trouble reports in the computation of company performance with regard to this standard could yield a distorted result.

ALLTEL argued that Sundays are a traditional day of rest and requiring employees to work on that day is not only a serious and unpopular imposition on employees, it is expensive. ALLTEL commented that, as it has limited work forces available to work regular trouble reports after 5:00 p.m. on Saturday, Sundays, and holidays, it continues to believe that regular trouble reports received during those times should be excluded. ALLTEL noted that, while the Public Staff characterized this as one of the “most important service quality measures,” ALLTEL would point out the practical reality that exclusive reliance on wireline service has declined as the prevalence of wireless service has dramatically increased. ALLTEL asserted that the general public’s utilization of wireless service has become so commonplace as to be nearly ubiquitous. Thus, as a practical matter, ALLTEL argued that, given the extensive number of homes which also have access to wireless service in the unlikely event that there is a problem with wireline service, even if the customer’s trouble reported over the weekend is not cleared until Monday, it is still quite unlikely that a household will be seriously inconvenienced or deprived of any means of telephonic communication.

PUBLIC STAFF: The Public Staff noted that companies point out that their staff is limited outside of normal business hours and ask the Commission to allow out-of-service troubles received on weekends and holidays to be excluded from the performance calculations. However, the Public Staff opined that a customer whose residential service is interrupted on weekends or holidays is just as inconvenienced (perhaps more so, if the customer is at home on weekends or holidays) as a customer whose service is interrupted during the work week. The Public Staff maintained that customers pay for and expect to have continuous, dependable telephone service 24 hours a day, seven days a week. Therefore, the Public Staff argued, companies should be expected to make diligent efforts to restore service 24 hours a day, seven days a week.

The Public Staff noted that it has never suggested that companies maintain full staffing levels on weekends and holidays to handle out-of-service repairs. The Public Staff asserted that the 5% margin and 24 hour time limit are both built into this objective to allow companies to exercise some discretion as to whether they must respond to out-of-service troubles at inconvenient times or under adverse conditions.

SPRINT: Sprint stated that the Public Staff would not exclude Sundays from this measure. Sprint noted, however, that Sundays are a traditional day of rest and requiring employees, who are, in fact, real people, to work on Sundays is most often a great imposition on them. Sprint asserted that, while much has changed in our state and region in recent decades, this remains true, and this is reflected by the fact that

Sprint's employment contracts require payment of double time for employees working on the Sabbath. Sprint argued that it can handle these calls more efficiently on Mondays, rather than Sundays, as the cost of fully staffing the technicians would cost twice as much on Sunday. Furthermore, Sprint maintained, with a limited workforce available to respond to troubles on Sunday, the personnel would waste considerably more time traveling extended distances between troubles as opposed to the greater number of employees staffing Mondays through Fridays who can each be assigned more limited geographic areas of coverage.

Sprint argued that, contrary to the Public Staff's unsupported argument that this is the most important of all service quality measures, this service measure is no more important than others, and its importance has been greatly diminished by the advent of new offerings such as wireless services. Sprint noted that there are currently more than 80 wireless phones for every 100 local access lines in North Carolina. Historically, Sprint contended, it has not worked nonemergency troubles on Sundays and holidays even when there were no, or essentially no, wireless telephones. Sprint noted that it understands that this does not mean that 8 out of 10 households have wireless phones, as many have more than one wireless phone, but this high level of wireless penetration surely suggests that a significant percentage of North Carolina households do have wireless phones which, in turn, makes wireline out-of-service conditions much easier for customers to deal with. Sprint argued that the Sunday and holiday exclusion was not problematic for many years, and with the proliferation of wireless telephones and the communications option they provide, the importance of the local access line has clearly been diminished. Sprint concluded that it does, of course, dispatch on Sundays, holidays, and all other days of the year in emergency situations.

DISCUSSION

The Commission notes that this issue concerning whether the calculations for Rule R9-8(g) Measure 11 – Out-of-Service Troubles Cleared Within 24 Hours should exclude Saturdays, Sundays, and holidays was not specifically addressed in the Commission's *December 27, 2002 Order*. In fact, this is the first time this specific issue has been presented to the Commission in this docket. In the *December 27, 2002 Order*, the Commission determined that the measurement procedure for Out-of-Service Troubles Cleared Within 24 Hours would include dividing the number of out-of-service troubles cleared during the calendar month and within 24 hours of their receipt by the total number of out-of-service trouble reports cleared during the calendar month to obtain the percentage cleared within 24 hours. However, the *Order* did not define if the 24 hours was for seven days a week or excluded Saturdays, Sundays, and holidays. During the negotiations on this issue, the Parties disagreed on whether the 24 hours should exclude Saturdays, Sundays, and holidays.

The Commission notes that ALLTEL, Concord, and Verizon support excluding Saturdays, Sundays, and holidays from the calculation; BellSouth, Lexcom, and the Public Staff support including Saturdays, Sundays, and holidays; Sprint supports

excluding Sundays from the calculation; and AT&T, Citizens, MCI, MebTel, QuantumShift, and Randolph did not take a position on this issue.

Again, the Commission continues to believe that out-of-service troubles is a critical service objective. Further, the Commission agrees with the Public Staff that, from the customers' perspective, out-of-service troubles are the same regardless of when they occur, and the companies should be expected to make out-of-service repairs every day of the year. The Commission also notes, as did the Public Staff, that since the standard for this measure is currently 95% and not 100%, companies have some flexibility in determining whether to require their repair forces to work on Saturdays, Sundays, and holidays. The Commission also agrees with the Public Staff that customers pay for and expect to have continuous, dependable telephone service 24 hours a day, seven days a week.

The Commission is not persuaded by ALLTEL's and Sprint's argument that, with the prevalence of wireless service, even if a customer's trouble reported over the weekend is not cleared until Monday, it is unlikely that the customer will be seriously inconvenienced or deprived of any means of telephonic communication. Simply because a customer has another way to communicate does not lessen the responsibility of the wireline telephone company to provide wireline service to customers who pay for such service.

Therefore, the Commission finds that the calculation for Measure 11 in Rule R9-8(g) should include Saturdays, Sundays, and holidays.

CONCLUSIONS: The Commission concludes that the calculation for Measure 11 in Rule R9-8(g) should include Saturdays, Sundays, and holidays.

UNRESOLVED ISSUE NO. 10: Should R9-8(g) Measure 13 give the customer a choice of either 4-hour appointment windows or morning or evening appointment windows?

POSITIONS OF PARTIES

ALLTEL: ALLTEL supports the use of morning or evening appointment windows, but only under circumstances when access to the customer's premises is necessary.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: BellSouth offers morning appointments (between the hours of 8:00 a.m. and 12 noon) and evening appointments (between the hours of 1:00 p.m. and 5:00 p.m.) today and feels strongly that they are appropriate appointment windows. These appointment windows have not prompted customer complaints and have worked extremely well for BellSouth and its customers. Having set windows, as opposed to just any four-hour appointment period, allows for more efficient scheduling and dispatching of BellSouth technicians. The rule should also clearly state that the appointment has

been met if the technician arrives within the specified appointment period and the order was completed by midnight.

CITIZENS: Citizens did not take a position on this issue.

CONCORD: Concord supports flexibility on this issue.

LEXCOM: Lexcom would prefer to have the schedule set up by a.m. and p.m. appointments.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: Measure 13 of Rule R9-8(g) should give the customer a choice of four-hour appointment windows.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph did not take a position on this issue.

SPRINT: Although Sprint does not agree that the Commission should dictate the structure of a company's appointment schedule, Sprint has not opposed such a provision in the Commission's Rule R9-8 in hopes that by doing so a compromise could be reached in this proceeding.

VERIZON: No.

INITIAL COMMENTS

CONCORD: Concord noted that it currently allows selection of either a morning or afternoon appointment window and that that system appears to be functioning adequately. Concord stated that a four-hour appointment window allows more flexibility for the customer but may also be more difficult for the telephone company to meet when prior service calls encounter unanticipated difficulties. Concord asserted that, in the absence of compelling evidence of a distinct customer preference, Concord would support allowing each company to select the method that best suits its practical experience.

PUBLIC STAFF: The Public Staff noted that in the Commission's *December 27, 2002 Order*, the Commission required companies to give customers four-hour appointment windows when scheduling premises visits for new installations rather than allowing a company merely to inform its customers that the installer will arrive for a premises visit in either the morning or the evening. The Public Staff opined that this provision gives the customer a shorter, more precise period of time in which to be available at the premises waiting for the installer to arrive. Moreover, the Public Staff asserted, allowing

a company a four-hour window in which to schedule an installation should give a company enough flexibility to account for unforeseen problems.

The Public Staff argued that Measure 13 of Rule R9-8(g) should require companies to allow a customer to select from two or more four-hour appointment windows when scheduling premises visits for new installations.

SPRINT: Sprint noted that, while it currently complies with this provision, Sprint believes that a Commission requirement for four-hour appointment windows hampers flexibility in an industry that is faced with ever increasing levels of competition and other changes and challenges. Sprint argued that companies should be free to allocate limited resources consistent with changing customer expectations. Sprint noted that this clearly is a circumstance where the market is superior to regulation. Sprint asserted that as competition increases, less regulation, not more, should be the norm.

VERIZON: Verizon argued that this proposal would interfere with the Company's ability to schedule its workforce in the most efficient manner and needlessly drive up costs.

REPLY COMMENTS

BELLSOUTH: BellSouth stated that it agrees with the Public Staff that Measure 13 of Rule R9-8(g) "should require companies to allow a customer to select from two or more four-hour appointment windows when scheduling premises visits for new installations." BellSouth argued that it is unnecessary for the Commission to specifically define the exact four-hour time periods. BellSouth commented that, as it noted in its initial comments, it offers morning appointments (between the hours of 8:00 a.m. and 12:00 noon) and evening appointments (between the hours of 1:00 p.m. and 5:00 p.m.) today and feels strongly that they are appropriate appointment windows. BellSouth asserted that those appointment windows have not prompted customer complaints and have worked extremely well for BellSouth and its customers. BellSouth argued that altering its standard appointment intervals would require costly system modifications without furthering the cause of improved customer service.

CONCORD: Concord stated that its current practice is similar to that of BellSouth in that it utilizes morning and afternoon appointment schedules for new installation and this approach appears to have worked well for Concord without customer complaint. Concord noted that this approach also allows it to schedule its appointments based on fixed blocks of time rather than more arbitrary four-hour blocks of time selected by its customers which are bound to vary from customer to customer. Concord asserted that in the absence of substantial evidence of customer unhappiness with or inconvenience caused by the existing practice, Concord does not believe that it is necessary or appropriate for the Commission to exercise this degree of control over its service scheduling practices.

PUBLIC STAFF: The Public Staff stated that it believes the morning and evening appointment windows BellSouth specified in its initial comments would satisfy recodified

Rule R9-8. However, the Public Staff maintained that in discussing customer appointments for new service installations with end users, BellSouth would need to specify appointment windows from 8:00 a.m. – 12:00 noon or 1:00 p.m. – 5:00 p.m. instead of “morning” or “evening” windows, so that customers clearly understand when BellSouth expects them to be at the premises.

DISCUSSION

The Commission notes that this issue concerning whether Rule R9-8(g) Measure 13 should allow customers a choice of two or more four-hour appointment windows was addressed in the Commission’s *December 27, 2002 Order*. In the *December 27, 2002 Order*, the Commission found that the measurement procedures for New Service Installation Appointments Not Met for Company Reasons should include the following provision:

Companies, at a minimum, shall offer customers scheduling premises appointments the opportunity to select from a set of two or more four-hour appointment ‘windows’ that will be made available for each day that appointments are being scheduled.

ALLTEL, BellSouth, and Lexcom support morning and evening appointment windows; Concord supports flexibility on the issue; AT&T, Citizens, MCI, MebTel, QuantumShift, and Randolph did not take a position on this issue; and Sprint and Verizon did not support either four-hour or morning or evening appointment windows. Parties generally argued that the Commission should allow companies the flexibility to schedule appointment windows as they see fit. The Commission sees the main area of contention being that carriers do not want to define four-hour windows and prefer maintaining morning and evening windows without any definition of the exact times considered morning or evening.

The Commission agrees with the Public Staff that a four-hour provision gives the customer a shorter, more precise period of time in which to be available at the premises waiting for the installer to arrive. Further, the Commission agrees with the Public Staff that allowing a four-hour window gives a company enough flexibility to account for unforeseen problems. The Commission believes that no party offered a compelling reason why this provision of the *December 27, 2002 Order* should be revised or altered.

The Commission believes that it is appropriate and reasonable to give customers a four-hour window in which they would be expected to be at the premises to meet the installer. The Commission believes that this decision will not require BellSouth to alter its standard appointment windows and incur costly system modifications since BellSouth already offers morning appointments with a defined window of 8:00 a.m. to 12 noon and evening appointments with a defined window of 1:00 p.m. to 5:00 p.m. BellSouth will simply be required to inform customers of the specific times associated with a morning or evening appointment. Implicit with this decision is the fact that each carrier may define the precise hours of its two, four-hour windows.

CONCLUSIONS: The Commission concludes that Measure 13 – New Service Installation Appointments Not Met for Company Reasons in Rule 9-8(g) should not be altered to merely offer a customer a morning or evening appointment without specific time parameters, but should continue to require companies to establish a minimum of two, precise, four-hour appointment windows. A carrier must define the exact four-hour window periods that best suit its business practices.

UNRESOLVED ISSUE NO. 11: In R9-8(h), should the 48 hours allowed for updating DA listings be extended to two business days?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue.

AT&T: Yes. Updated customer information should be provided within two business days.

BELLSOUTH: BellSouth currently updates listings within 48 hours.

CITIZENS: Citizens did not take a position on this issue.

CONCORD: Yes.

LEXCOM: Yes. Lexcom believes that it should be extended to two business days.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: No. In Rule R9-8(h), the 48 hours allowed for updating listings should not be extended to two business days.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph did not take a position on this issue.

SPRINT: Although Sprint does not agree that a Commission rule requiring 48 hour updates to DA listings is necessary, Sprint has not opposed such a provision in the Commission's Rule R9-8 in hopes that by doing so an acceptable compromise could be reached in this proceeding.

VERIZON: Yes.

INITIAL COMMENTS

AT&T: AT&T stated that it understands the desire to ensure that customers who call DA receive up-to-date information. However, AT&T argued, this interest should also be balanced against the cost and burden on carriers to provide accurate updated customer information to third party DA providers. AT&T maintained that, in this instance, accuracy is extremely important if carriers are to be required to provide refunds for incorrect DA listings. AT&T asserted that extending the time to two business days for transmittal of updated customer information should not have a detrimental impact on North Carolina consumers.

CONCORD: Concord noted that it does not provide its own DA listings; that function is currently outsourced to a third party. Concord stated that it will provide updated customer information to its DA vendor within 48 hours, but, following the provision of such information, Concord has no control over how quickly that information is converted in the DA database. Concord maintained that two business days would provide a more reasonable timeframe for accomplishment of all the tasks necessary to implement a change in customer information into the DA database.

LEXCOM: Lexcom noted that staffing outside of regular working hours is a significant cost increase. Therefore, Lexcom would prefer a two business day objective.

PUBLIC STAFF: The Public Staff noted that the Commission, in its *December 27, 2002 Order*, required the companies to update DA listings in databases they maintain or control within 48 hours excluding Saturdays, Sundays, and holidays. The Public Staff commented that, under the proposed rule attached to the Joint Report, companies must update a listing within 48 hours, excluding Saturdays, Sundays, and holidays, of either notification of such a new or changed listing or receipt of a completed service order from another carrier or DA provider. The Public Staff noted that if the 48 hours were extended to two business days, a customer's listing given to a company the Friday before Memorial Day might not be included in the company's database until the next Wednesday. The Public Staff opined that it is important for new or updated listings to be available as soon as possible, and five days is too long. Moreover, the Public Staff stated that, until a listing is updated, a company would be giving out incorrect information and would be liable for DA refunds if customers requested them.

The Public Staff argued that the 48 hours allowed in Rule R9-8(h) for updating DA listings should not be extended to two business days.

SPRINT: Sprint noted that, while it currently complies with this provision, Sprint believes a specific Commission requirement for updating DA listings is unnecessary. Sprint argued that companies should be free to allocate their limited resources consistent with customer expectations which change over time. Sprint maintained that as competition increases, less regulation, not more, should be the norm.

VERIZON: Verizon noted that the existing interval includes weekend and holiday hours when staffing levels are lower. Verizon asserted that it is therefore reasonable to extend the existing interval to two business days, which will still assure timely updating by staff working during normal business hours. Verizon stated that this will help ensure that companies can allocate the limited resources that they may have on weekends and holidays to emergency and other priority matters impacting customer service.

REPLY COMMENTS

CONCORD: Concord noted that, in clarification of the statement it made in its initial comments that “Concord does not provide its own DA listings”, it provides DA listings to third-party DA providers who then provide DA service to Concord’s end-users. Concord maintained that, in addition to this clarification, it supports the position of AT&T on this issue to the effect that two business days represents a reasonable compromise for updated DA information given the relative competing interests in providing accurate and timely DA information.

DISCUSSION

The Commission notes that this issue concerning whether Rule R9-8(h) should allow for DA listing updates in 48 hours was addressed in the Commission’s *December 27, 2002 Order*. In the *December 27, 2002 Order*, the Commission found that carriers must update their DA customer listings in any directory database that the company maintains and/or controls within 48 hours of a service order resulting in a new or changed listing, excluding Saturdays, Sundays, and holidays.

BellSouth and the Public Staff support updates in 48 hours; AT&T, Concord, Lexcom, and Verizon support updates in two business days; ALLTEL, Citizens, MCI, MebTel, QuantumShift, and Randolph did not take a position on this issue; and Sprint, although it does not agree with 48 hours, does not oppose such a provision.

The Commission agrees with the Public Staff that extending the time period to two business days could result in instances when DA listing updates are not provided for several days after a change occurs. Further, the Commission believes that no party offered a compelling reason why this provision of the *December 27, 2002 Order* should be revised or altered.

The Commission also notes that Verizon’s contention is incorrect – the existing interval actually does exclude Saturdays, Sundays, and holidays.

The Commission believes that it is appropriate and reasonable to require DA updates in any directory database a company maintains and/or controls within 48 hours excluding Saturdays, Sundays, and holidays as originally ordered by the Commission in the *December 27, 2002 Order*.

CONCLUSIONS: The Commission concludes that it is not appropriate to alter Rule R9-8(h) by allowing DA updates in two business days, thereby continuing to require such updates to be completed within 48 hours excluding Saturdays, Sundays, and holidays.

UNRESOLVED ISSUE NO. 12: In R9-8(i), should there be a requirement that a refund be issued for an incorrect DA listing?

POSITIONS OF PARTIES

ALLTEL: Yes. ALLTEL supports this requirement.

AT&T: No.

BELLSOUTH: BellSouth currently issues a refund for incorrect DA listings.

CITIZENS: Citizens does not oppose imposition of this requirement.

CONCORD: A refund policy should be ordered only if the same refund obligation exists for all carriers, ILEC and non-ILEC.

LEXCOM: Currently Lexcom provides five free DA listings and it does allow refunds if the listing is incorrect and the customer has initially paid for the listing.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: The Commission should require companies to issue refunds for incorrect DA listings provided to customers.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph did not take a position on this issue.

SPRINT: While Sprint currently complies with this provision, Sprint does not agree that a Commission rule requiring a refund for an incorrect DA listing is necessary. Nevertheless, Sprint has not opposed such a provision in the Commission's Rule R9-8 in the hope that by doing so an acceptable compromise could be reached in this proceeding.

VERIZON: No.

INITIAL COMMENTS

ALLTEL: ALLTEL noted that it already provides credits to its customers who inform the company that they have received incorrect directory assistance information. ALLTEL stated that it will continue to do so.

AT&T: AT&T asserted that, in some instances, AT&T contracts with an outside vendor to provide DA. AT&T noted that the outside vendor relies upon the data obtained from the ILEC to provide the customer with the DA listing. AT&T stated that, because it has no control over the accuracy of the ILEC DA database and there is no requirement for the ILEC to share updated information it receives with third party providers within 48 hours, AT&T would incur costs to query the ILEC's database that cannot be recovered if refunds were required for incorrect listings.

CONCORD: Concord noted that incorrect DA listings can result from a number of possible mistakes in the chain of transmission and storage of such information. Concord maintained that it should not be presumed that the mistake always lies with the underlying telephone providers unless there is a factual basis for that conclusion. Concord noted that because this is an economic issue, automatic refund obligations should not be imposed unless the requirement will be imposed equally on all providers of telecommunications services, including wireless service providers and interexchange carriers.

PUBLIC STAFF: The Public Staff noted that the rule adopted by the Commission in its *December 27, 2002 Order* requires companies to issue refunds to customers for providing incorrect DA information, if customers so request. The Public Staff stated that it believes this requirement is appropriate. The Public Staff argued that it recognizes the frustration experienced by a customer who calls DA, receives an incorrect listing, and then receives a bill from the provider for the incorrect information. The Public Staff maintained that it also gives companies an incentive to ensure that their DA databases are correct. The Public Staff commented that Section (h) of the proposed rule attached to the Joint Report deletes the requirement that a refund be issued for no listing, since it may not be a company's fault that there is no listing for a customer.

The Public Staff argued that there should be a requirement in the rule that customers be issued refunds for incorrect DA listings.

SPRINT: Sprint argued that a specific Commission requirement for a refund for an incorrect DA listing is unnecessary and even unreasonable. Sprint noted that customers frequently provide incorrect or partial information when requesting directory listings, and it is often impossible to determine whether fault for provision of incorrect listing information lies with the customer or the company. Sprint maintained that when it is not clear where the fault lies, Sprint's practice is to defer to the customer. Sprint argued that DA is a highly competitive service with numerous alternatives that range from wholesalers, to the Internet, to wireless providers. Therefore, Sprint opined, less, not more, regulation is called for.

VERIZON: Verizon maintained that there are a variety of reasons for incorrect DA listings other than company error. Verizon maintained that there should be no automatic requirement for a refund. Verizon noted that, under its existing DA credit policy, North Carolina customers can request a refund for an incorrect listing at any time, either through their operator, or by calling the appropriate customer service center and requesting a refund. Verizon noted that there is no evidence that the existing policies are inadequate. Therefore, Verizon argued, more extensive direct regulation in this area is unnecessary and inappropriate.

REPLY COMMENTS

CONCORD: Concord stated that it continues to support its position as outlined in its initial comments. Concord maintained that its position is that incorrect DA listings can result from a number of possible mistakes in the chain of transmission and storage of such information. Concord asserted that, as such, it cannot be presumed that the mistake always lies with the local telephone service provider. Concord commented that because this is an economic issue, automatic refund obligations should not be imposed unless the requirement will be imposed equally on all providers of telecommunications services including wireless service providers, interexchange carriers, and VoIP providers.

PUBLIC STAFF: The Public Staff noted that many companies point out that the possibility of fraud exists if refunds are automatically required whenever a customer claims to have received an incorrect DA listing. The Public Staff argued that the Commission should encourage companies to inform the Commission if they have evidence that the automatic DA refund requirement is being abused by customers. The Public Staff opined that the Commission may then consider modifying the refund requirement.

DISCUSSION

The Commission notes that this issue concerning whether Rule R9-8(i) should include a requirement that a refund be issued for an incorrect DA listing was addressed in the Commission's *December 27, 2002 Order*. In the *December 27, 2002 Order*, the Commission ordered carriers to provide DA refunds for an incorrect DA listing or no listing.

ALLTEL, BellSouth, Lexcom, and the Public Staff support requiring DA refunds; AT&T, Concord, and Verizon do not support DA refunds; Citizens does not oppose imposition of the refund requirement; MCI, MebTel, QuantumShift, and Randolph did not take a position on this issue; and Sprint, although it does not agree with the refund requirement, does not oppose such a provision.

The Commission agrees with the Public Staff and believes that a customer that calls DA, receives an incorrect listing, and then is billed for the incorrect listing most likely would be frustrated. In fact, several companies such as ALLTEL, BellSouth, and

Verizon already will provide DA refunds for incorrect listings. The Commission does not believe that any party offered a compelling reason why this provision of the *December 27, 2002 Order* should be revised or altered.

The Commission also notes that the Parties have agreed that refunds for no DA listing should be removed from Rule R9-8(i) since it may not be a company's fault that there is no listing for a customer and that Rule R9-8(i) should be clarified to reflect that refunds should be provided "upon request".

Further, the Commission supports the Public Staff's suggestion that, if companies experience customer abuse with the DA refund policy, the companies should inform the Commission of such evidence and the Commission should examine the evidence and consider removing the requirement.

The Commission believes that it is appropriate and reasonable to require companies to provide refunds upon request for incorrect DA listings as originally ordered by the Commission in the *December 27, 2002 Order*.

CONCLUSIONS: The Commission concludes that Rule R9-8(i) should continue to have the requirement that a refund be issued upon request for an incorrect DA listing.

UNRESOLVED ISSUE NO. 13: In R9-8(i), should there be a requirement that the refund policy be published prominently?

POSITIONS OF PARTIES

ALLTEL: No. ALLTEL does not support adding this requirement to prominently publish the refund policy.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: BellSouth had no comment on this issue.

CITIZENS: Citizens did not take a position on this issue.

CONCORD: No.

LEXCOM: No. Lexcom believes that it is not necessary.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: Yes. The Commission should require that a company's DA refund policy be published prominently in the DA section of each local telephone directory.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: No.

SPRINT: Although Sprint does not agree that there should be a Commission rule requiring that the refund be published prominently, Sprint has not opposed such a provision in the Commission's Rule R9-8 in the hope that by doing so a compromise could be reached in this proceeding.

VERIZON: No.

INITIAL COMMENTS

ALLTEL: ALLTEL noted that, with regard to the imposition of a new requirement to publish the uniform DA refund policy prominently in the DA section of each local telephone directory, ALLTEL believes that this additional requirement will significantly increase costs, particularly for companies that have standardized directory formats. ALLTEL maintained that the Commission should be cognizant of these costs and should remove this requirement based on the lack of evidence supporting this additional requirement. ALLTEL stated that it also has concerns that the publication of this policy will increase the likelihood of fraudulent efforts to obtain unwarranted credits. ALLTEL asserted that the fact that customers already call and request a credit when incorrect numbers are given supports removal of this requirement. ALLTEL stated that there is no evidence before the Commission that would support the conclusion that there will be any significant benefits derived from this additional publication.

CONCORD: Concord maintained that a requirement is not necessary to ensure that the DA refund policy is published prominently.

PUBLIC STAFF: The Public Staff stated that it believes that publishing the DA refund policy in the directory is the best way to inform customers of their right to refunds for inadequate DA service and about the correct procedures to follow to request a refund. The Public Staff opined that customers should not be required to call the company or consult the company's tariff to find out if such a policy exists. The Public Staff maintained that, if there is no requirement that customers be informed of this policy unless they specifically inquire about it, the company is less likely to be required to give refunds for incorrect listings and therefore is more likely to profit from its provision of less than adequate service; this is clearly inappropriate. However, the Public Staff noted that it has withdrawn its previous proposal that customers also be informed of companies' DA refund policies by yearly bill insert.

The Public Staff argued that there should be a requirement in the rule that a company's DA refund policy be published prominently in the DA section of each local telephone directory.

RANDOLPH: Randolph stated that it does not believe companies should be required to publish DA refund policies in their directories. Randolph noted that required regulatory bill inserts and directory information have increased exponentially over the past few years and this imposes additional costs and administrative burdens on companies. Randolph commented that prominent posting of refund policies may also lead to abuse by some customers.

SPRINT: Sprint asserted that many customers are aware that Sprint provides refunds in the unusual circumstance when an incorrect DA listing is provided. However, Sprint argued, an additional requirement to publish such a policy may encourage fraud.

VERIZON: Verizon asserted that it provides excellent DA service to its North Carolina customers, and therefore there is no good reason to impose this additional regulation on the Company. Verizon noted that, given that there is no cost-effective means for the Company to verify that a customer refund is appropriate, this requirement may increase the number of erroneous and/or fraudulent refund requests.

REPLY COMMENTS

PUBLIC STAFF: The Public Staff noted that ALLTEL, Randolph, Sprint, and Verizon contended that publishing details of a DA refund policy in the telephone directory would increase the likelihood of fraudulent claims. The Public Staff asserted that, while the number of fraudulent claims may increase to some extent, it is more likely that there will be an even greater increase in the number of legitimate claims. The Public Staff stated that it believes that the publication of the refund policy will have a positive impact on consumers overall, and urged the Commission to retain this requirement.

DISCUSSION

The Commission notes that this issue concerning whether Rule R9-8(i) should include a requirement that the uniform DA refund policy be published prominently in the DA section of each local telephone directory was addressed in the Commission's *December 27, 2002 Order*. In the *December 27, 2002 Order*, the Commission ordered carriers to publish the uniform DA refund policy prominently in each local telephone directory.

The Public Staff supports requiring publication of the DA refund policy; ALLTEL, Concord, Lexcom, Randolph, and Verizon do not support requiring publication of the DA refund policy; AT&T, BellSouth, Citizens, MCI, MebTel, and QuantumShift did not take a position on this issue; and Sprint, although it does not agree with the requirement, does not oppose such a provision.

The Commission agrees with the Public Staff that publishing the DA refund policy is a way to inform customers of their right to refunds for inadequate DA service and the procedures to follow to request a refund. The Commission believes that it is important for customers to be informed about the policy. The Commission also agrees that

publication of the refund policy would have a positive impact on consumers overall. Further, the Commission does not believe that any party offered a compelling reason why this provision of the *December 27, 2002 Order* should be revised or altered. The Parties' concern over fraud was addressed in the *December 27, 2002 Order* and, as noted in Unresolved Issue No. 12, the Commission supports the Public Staff's suggestion that if companies experience customer abuse with the DA refund policy, the companies should inform the Commission of such evidence and the Commission should examine the evidence and consider removing the requirement.

The Commission believes that it is appropriate and reasonable to require companies to prominently publish the uniform DA refund policy in the DA section of each local telephone directory.

CONCLUSIONS: The Commission concludes that it is appropriate to require carriers to prominently publish the uniform DA refund policy in the DA section of each local telephone directory consistent with the Commission's finding in its *December 27, 2002 Order*.

UNRESOLVED ISSUE NO. 14: Should self-effectuating penalties for violation of service quality standards be included in price plans?

POSITIONS OF PARTIES

ALLTEL: As new price plans are approved or current price plans are modified, and to the extent that all providers of local services are required to be regulated for service quality standards, then it would be reasonable to determine what, if any, penalties should exist at that time.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: The application of self-effectuating penalties in price plans should not be addressed in this docket.

CITIZENS: Citizens did not take a position on this issue.

CONCORD: No.

LEXCOM: Lexcom is a rate of return company and takes no position on this issue.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: Self-effectuating penalties for violation of service quality standards should be included in price plans whenever possible.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph did not take a position on this issue.

SPRINT: Although Sprint does not agree that self-effectuating penalties are necessary to ensure good customer service, it has agreed to a number of self-effectuating penalties in its Price Regulation Plan.

VERIZON: No.

INITIAL COMMENTS

ALLTEL: ALLTEL stated that its current price plan in effect under N.C.G.S. 62-133.5 does not establish any penalties for violations of service quality standards. ALLTEL noted that this plan will remain in effect until ALLTEL seeks to modify the current plan and the Commission approves a modified plan. ALLTEL maintained that it is imperative that when and if the Commission undertakes to impose penalties associated with failure to meet service objective standards, it applies all standards equally and fairly to all carriers providing local service.

CONCORD: Concord stated that it believes that this approach is inherently punitive in nature and should not be required for companies, such as Concord, that have no history of poor service quality. Concord further noted that, by definition, this requirement would apply only to companies that are price regulated by the Commission and, therefore, would not apply to large numbers of competitive providers who would be operating under entirely different regulatory requirements. Concord asserted that this approach is inherently discriminatory in nature and should not be pursued.

PUBLIC STAFF: The Public Staff noted that in the Commission's *December 27, 2002 Order*, the Commission found that self-effectuating penalties for rendering inadequate service were an integral part of price plans. However, the Public Staff noted that Senate Bill 814 has considerably changed the likelihood of including self-effectuating penalties in existing price plans, unless a company agrees to such a provision in return for other modifications to its plan. Thus, the Public Staff opined, the Commission may wish to revisit the Public Staff's earlier proposal for including a self-effectuating penalty plan in Rule R9-8.

The Public Staff argued that self-effectuating penalties for violation of service quality standards should be included in price plans whenever possible.

SPRINT: Sprint argued that the competitive nature of the telecommunications industry itself provides far more incentive to provide good customer service than self-effectuating penalties. Sprint maintained that the loss of customers and associated loss of revenues due to failures to provide adequate service are far more effective than self-effectuating penalties.

VERIZON: Verizon stated that the ITF and Verizon have explained in detail that the Commission has no authority to order self-effectuating penalties. Verizon noted that they have also made clear that the Commission cannot force a company to adopt “voluntarily” illegal self-enforcing penalties so that the Company may obtain lawful changes to its price plan regulation. Additionally, Verizon commented, it has shown that, even if the Commission had the authority to order self-enforcing penalty mechanisms, which it does not, the Commission still could not adopt them based on the record in this proceeding. Verizon maintained that, because there is no evidence to demonstrate that self-enforcing penalty mechanisms are necessary, adopting the penalties would be an illegal “arbitrary and capricious” act. Finally, Verizon argued that imposing self-imposing penalty mechanisms on the parties would be poor public policy. Verizon asserted that, given the troubled state of the telecommunications industry today, it would be a particularly bad time to impose additional, unnecessary regulatory burdens on Verizon – especially without any legal foundation.

REPLY COMMENTS

ATTORNEY GENERAL: The Attorney General noted that he had previously filed comments in this docket stating that the Commission should review the proposals set forth by the ITF and the Public Staff with an eye towards maintaining service quality to consumers. The Attorney General noted that he also recommended that, once the Commission determines what the appropriate rules should be, the Commission should provide appropriate incentives for the companies to abide by the rules. Specifically, the Attorney General noted that he previously recommended: (1) that the Commission issue bill credits or impose penalties on carriers when they failed to meet important service objectives (such as out-of-service troubles cleared within 24 hours); and (2) that the Commission post pass/fail statements on its website indicating whether carriers were in compliance with the service quality rules. The Attorney General stated that bill credits or penalties provide carriers with monetary incentives to comply with the rules. The Attorney General commented that publicizing non-compliance with the rules provides carriers with reputation-related incentives to comply; indeed, many of the carriers filed extensive comments in which they stated that they feared their reputations would be damaged if compliance reports were made public. The Attorney General maintained that both of these incentives are needed to ensure compliance with the service quality rules because under price plan regulation local exchange carriers no longer have their returns on equity strictly regulated and have economic incentives to cut costs, including costs that impact service quality, in order to increase profits.

For the foregoing reasons, the Attorney General stated that in his reply comments he would comment on the recent positions taken by the ITF and the Public Staff regarding the two issues described above – the penalty issue and the website reporting issue. The Attorney General stated that he continues to believe that the Commission must provide the companies with appropriate incentives to comply with the service quality rules. As a matter of common sense, the Attorney General maintained, service quality rules, like many rules, are virtually meaningless if there are not enforcement mechanisms to ensure compliance.

The Attorney General noted that in its *December 27, 2002 Order*, the Commission stated that “the Commission has the power in appropriate circumstances to require penalties or bill credits, which are in the nature of refunds.” The Attorney General commented that the Commission considered the extent to which it could streamline the penalty/refund process for service quality deficiencies and determined that the most efficient approach to take was to require local exchange carriers that did not already have self-effectuating penalty provisions in their price plans to voluntarily accept such mechanisms in their price plans when their plans were up for review. The Attorney General maintained that the Commission stated that it viewed such penalty mechanisms as “integral” to the price plans.

Since that time, the Attorney General noted, Senate Bill 814 has eliminated, or at least greatly reduced, the Commission’s ability to require companies to include self-effectuating penalties in their price plans (if the plan does not already contain such a provision) because, if the company does not agree with proposed modifications made to the price plan by the Commission, the company can continue to operate under its current plan. Recently, the Attorney General commented, the companies having plans without self-effectuating penalties filed comments taking the position that self-effectuating penalties should not be included in their price plans. The Attorney General stated that, in light of Senate Bill 814, it may no longer be feasible to require these companies to include such mechanisms in their price plans.

The Attorney General noted that the Public Staff filed comments on December 8, 2003 stating that, due to Senate Bill 814, the Commission may wish to revisit the Public Staff’s earlier proposal for including a self-effectuating penalty plan in Rule R9-8. The Attorney General maintained that this proposal requires companies to pay bill credits, refunds, or penalties when a company fails to meet important service quality standards, such as out-of-service troubles cleared within 24 hours. The Attorney General stated that he agrees and believes that this penalty mechanism, or something like that, should be included in the service quality rules in light of recent developments.

Further, the Attorney General noted that in its *December 27, 2002 Order*, the Commission decided that it would be appropriate to publish pass/fail information on its website indicating whether companies were in compliance with the Commission’s service quality rules, along with information indicating whether companies had paid penalties to the Commission for violations of said rules. The Attorney General commented that the Public Staff and the Attorney General had worked together to develop these pass/fail statements and filed comments in support of them. The Attorney General maintained that the Commission stated that it “views the disclosure of service quality information to be very much in the public interest.” However, the Attorney General noted, in their joint report, the Public Staff and the ITF now propose deleting this provision from the rules.

The Attorney General stated that he believes that this provision should not be deleted from the rules, especially in light of the fact that no agreement or consensus was reached among the parties regarding self-effectuating penalties. The Attorney General

noted that, in the absence of such agreement, it simply makes no sense to delete this provision because, as set forth above, publicizing non-compliance with the rules provides the companies with the incentive to comply. The Attorney General maintained that the Commission previously decided that publication of such information was lawful and in the public interest; no compelling reason has been given for reversing that decision.

The Attorney General concluded by noting that service quality rules are necessary because the telecommunications market is still not fully competitive. The Attorney General stated that, while the market has become more competitive in recent years, competition has not reached many residential customers, particularly in rural areas. Indeed, if anything, the Attorney General opined, service quality rules take on an even greater importance during the transition to competition because under price plan regulation companies have more freedom to cut costs. The Attorney General maintained that if cutting costs significantly impacts service quality, then the public interest is harmed. The Attorney General asserted that proper incentives must be put in place to ensure that companies devote appropriate resources that enable them to comply with the rules. The Attorney General argued that imposing penalties and publishing pass/fail information on the Internet will help ensure compliance.

DISCUSSION

In the *December 27, 2002 Order*, the Commission found it appropriate to concentrate on adequate self-effectuating penalties under the various price regulation plans in preference to a universal self-effectuating penalty or bill credit mechanism that would be applicable to all ILECs. The Commission stated that it views a self-effectuating penalty provision to be a central element in determining whether a proposed price plan is in the public interest; since a company up for a new price plan or price plan review would voluntarily accept the self-effectuating penalty mechanism as part of the price plan, it could not be heard to object to the inclusion of such a provision on due process grounds, although the precise terms of such mechanism would surely be subject to debate.

As noted by the Parties, on May 30, 2003, Senate Bill 814 was signed into law. Senate Bill 814 added the following language to G.S. 62-133.5(c):

If the Commission disapproves, in whole or in part, a local exchange company's application to modify its existing form of price regulation, the company may elect to continue to operate under its then existing plan previously approved under this subsection or subsection (a) of this section.

As the Attorney General noted, Senate Bill 814 has eliminated, or at least greatly reduced, the Commission's ability to require companies to include self-effectuating penalties in their price plans (if the plan does not already contain such a provision) because, if the company does not agree with proposed modifications made to the price

plan by the Commission, the company can continue to operate under its current plan. The Attorney General commented that, in light of Senate Bill 814, it may no longer be feasible to require companies to include such mechanisms in their price plans.

The Public Staff maintained that Senate Bill 814 has changed the landscape considerably as to the likelihood of including self-effectuating penalties in existing price plans, unless a company agrees to such a provision in return for other modifications to its plan. Therefore, the Public Staff suggested that the Commission may wish to revisit the Public Staff's earlier proposal for including a self-effectuating penalty plan in Rule R9-8.

The Commission notes that the *December 27, 2002 Order* clearly outlined that "an overly ambitious approach by the Commission, whatever its abstract merits, could lead to years of argument and litigation." The Commission is not persuaded by any of the comments provided on this issue or Senate Bill 814 that the Commission should alter its previous decision on this issue. The Commission believes that it is still appropriate not to adopt the Public Staff's recommendation that the Commission revise Rule R9-8 to require the issuance of bill credits whenever local service providers fail to provide adequate service at or better than the benchmark performance for certain measures. The Commission believes it remains appropriate to concentrate on adequate self-effectuating penalties under the various price regulation plans.

CONCLUSIONS: The Commission finds it appropriate to affirm its decision in the *December 27, 2002 Order* that it views a self-effectuating penalty mechanism to be a central element in whether a proposed price plan is in the public interest.

UNRESOLVED ISSUE NO. 15: Should there be a mechanism for waiver of service quality standards or credits for missing service quality standards for the small companies?

POSITIONS OF PARTIES

ALLTEL: Yes. ALLTEL supports adoption of a waiver mechanism for very small companies. ALLTEL further supports a procedure that would allow any company that has met the service quality standards for 12 consecutive months to elect to file a streamlined report; in the event a company filing streamlined reports fails to meet service standards for two consecutive months, then the full reporting requirements would be reinstated.

AT&T: AT&T did not take a position on this issue.

BELLSOUTH: No. BellSouth argued that network measures are reported based on either "per 100 access lines" or on a percentage basis; either of these methods of reporting takes into account the difference in the number of lines in service between companies. BellSouth stated that it fails to understand why it would be appropriate for small companies to be treated differently.

CITIZENS: Yes. Citizens maintained that the revised rules on service objectives should make provision for some waiver of service quality standards, or some sort of mechanism providing an allowance or credits for isolated incidents when smaller companies miss service quality standards on an irregular basis.

CONCORD: Yes.

LEXCOM: This may be an issue for smaller companies (i.e., companies smaller than Lexcom), but Lexcom does not need a waiver.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: No. The Public Staff argued that a mechanism for waiver of service quality standards or credits for missing service quality standards for the small companies is unnecessary.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Yes.

SPRINT: This issue is not applicable to Sprint.

VERIZON: Verizon did not take a position on this issue.

INITIAL COMMENTS

ALLTEL: ALLTEL pointed out that it has consistently met the Commission's existing service objective standards. ALLTEL stated that it believes that most other service providers are likewise meeting the current service objectives. ALLTEL maintained that because of legitimate questions about the extent of any additional benefits which might accrue to the public as a result of the imposition of new, more rigorous standards, relative to the cost of implementation, ALLTEL submitted that it may be appropriate for the Commission to consider establishing a sliding scale of service objective standards, by imposing requirements which are tied to company performance. ALLTEL proposed that factors to be considered before imposing any additional service objective standards, reporting requirements, or waiver mechanisms could include a company's service objective compliance history, including whether there have been service quality complaints. ALLTEL stated that the result of such an approach would be that companies, such as ALLTEL and any other company consistently satisfying the requirements of Rule R9-8, and who are not the subject of consumer complaints, would not be subjected to the more onerous requirements proposed in the *December 27, 2002 Order* unless and until they failed to satisfy those service objective standards.

CONCORD: Concord maintained that where small telephone companies are able to demonstrate a lack of customer dissatisfaction with existing service mechanisms and/or a lack of immediate technical capability to implement the heightened standards under review in this docket, the Commission should be amenable to issuing waivers or otherwise not penalizing these companies. Concord asserted that the genesis of the instant docket was a significant number of service quality issues that arose with some of the larger service providers in the State which were not shared by the small ILECs. Concord stated that these smaller ILECs are now faced with more rigorous service quality standards than they are technically capable of measuring in many instances because of the problems of larger carriers notwithstanding the fact that all of the available evidence is that the small ILECs are providing good service to their customers and their customers are satisfied with that service.

LEXCOM: Lexcom noted that because of its high service standards, it believes that it should not need a waiver.

PUBLIC STAFF: The Public Staff opined that a special waiver or credit mechanism for small companies is inappropriate and unnecessary. The Public Staff asserted that Section (c) of both the version of Rule R9-8 adopted by the Commission in its *December 27, 2002 Order* and the version attached to the Joint Report is a Force Majeure clause allows any sized company to seek a waiver of the service quality standards due to unforeseen or catastrophic events. The Public Staff maintained that this waiver should be adequate to meet the concerns of small companies. Moreover, the Public Staff asserted, small and large companies should be held to the same standards. The Public Staff argued that it would be unfair for a consumer served by a small company to receive inferior service as opposed to a customer of a large company.

The Public Staff argued that there should not be a mechanism for waiver of service quality standards or credits for missing service quality standards for the small companies.

RANDOLPH: Randolph stated that it believes special consideration should be given to small companies because their limited size could easily cause them to miss a standard due to no fault of their own.

REPLY COMMENTS

No party filed reply comments on this issue.

DISCUSSION

The Commission notes that this issue concerning whether there should be a mechanism for waiver of service quality standards or credits for missing service quality standards for the small companies was not specifically addressed in the Commission's *December 27, 2002 Order*. In fact, this is the first time this specific issue has been presented to the Commission in this docket.

The Commission notes that ALLTEL, Citizens, Concord, and Randolph support a waiver for small companies; BellSouth and the Public Staff oppose a waiver for small companies; and AT&T, Lexcom, MCI, MebTel, QuantumShift, Sprint, and Verizon did not take a position on this issue.

The Commission agrees with the Public Staff that a special waiver or credit mechanism for small companies is inappropriate and unnecessary. As noted by the Public Staff, including a Force Majeure clause in Rule R9-8 will allow any sized company to seek a waiver of the service quality standards due to unforeseen or catastrophic events. Further, the Commission notes that, notwithstanding the Force Majeure clause, companies are free to file a waiver request with the Commission on any matter. Therefore, special waiver or credit mechanisms are not necessary.

CONCLUSIONS: The Commission concludes that it is inappropriate to adopt a mechanism for waiver of service quality standards or credits for missing service quality standards for small companies.

UNRESOLVED ISSUE NO. 16: Should updated customer information to a third party DA provider be provided in 24 or 48 hours?

POSITIONS OF PARTIES

ALLTEL: ALLTEL does not oppose adoption of either standard.

AT&T: Updated customer information should be provided within two business days.

BELLSOUTH: BellSouth provides updated customer information within 48 hours.

CITIZENS: Citizens did not take a position on this issue.

CONCORD: Updated customer information should be provided within 48 hours.

LEXCOM: In regards to information Lexcom controls, it believes that 48 hours would be a reasonable time to expect an update.

MCI: MCI did not take a position on this issue.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: Updated customer information to a third-party DA provider should be provided in 24 hours.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph believes customer information should be provided to a third party DA provider within 48 hours.

SPRINT: Although Sprint does not agree that a Commission rule requiring a specific timeframe for updates is necessary, Sprint has not opposed such a provision in the Commission's Rule R9-8 in hopes that by doing so a compromise could be reached.

VERIZON: No to both requirements.

INITIAL COMMENTS

AT&T: AT&T stated that it understands the desire to ensure that customers who call DA receive up-to-date information. However, AT&T argued, this interest should also be balanced against the cost and burden on carriers to provide accurate updated customer information to third party DA providers. AT&T maintained that, in this instance, accuracy is extremely important if carriers are to be required to provide refunds for incorrect DA listings. AT&T asserted that extending the time to two business days for transmittal of updated customer information should not have a detrimental impact on North Carolina consumers.

CONCORD: Concord maintained that its current business practices allow for provision of this information within a 48 hour window. Concord noted that moving this requirement up to 24 hours will not materially increase service quality but will require changes in Concord's business practices. Concord asserted that it is not aware of any evidence that the public is being harmed by the existing methodology or that the public would be materially benefited by the proposed change.

PUBLIC STAFF: The Public Staff noted that, as it stated with regard to Unresolved Issue No. 11, it believes it is important that DA listings be updated as soon as possible to minimize the likelihood of a customer being told there is no listing or being given an incorrect listing. The Public Staff maintained that when a company employs a third-party DA provider, both the company and the third-party provider need to work together as efficiently as possible so that information is updated quickly and accurately. The Public Staff stated that it does not believe it will be unduly burdensome for companies to forward this information to DA providers within a 24-hour timeframe, particularly since the information is likely to be shared electronically.

The Public Staff argued that updated customer information to a third-party DA provider should be provided in 24 hours.

RANDOLPH: Randolph argued that small companies have a need for additional flexibility in updating DA information due to limited resources and personnel.

SPRINT: Sprint noted that, while it currently complies with this provision, Sprint believes that a specific Commission requirement for updating DA listings is unnecessary. Sprint argued that companies should be free to allocate limited resources

in a manner consistent with changing customer expectations. Sprint maintained that as competition increases, less regulation, not more, should be the norm.

VERIZON: Verizon argued that there is no good reason to impose this regulation on Verizon. Verizon stated that updated customer information from completed service orders is made available to third-party DA providers under contract with Verizon. Verizon noted that daily updates are provided to such third-party providers at the same frequency and with the same listing information that Verizon uses to update its own database. Therefore, Verizon stated, third party providers receive listings at parity with Verizon, as required under applicable federal law.

REPLY COMMENTS

No party filed reply comments on this issue.

DISCUSSION

The Commission notes that this issue concerning whether updated customer information should be provided to a third party DA provider in 24 or 48 hours was not addressed in the Commission's *December 27, 2002 Order*. In fact, this is the first time this issue has been presented to the Commission in this docket. Apparently, as the Parties were negotiating language for Rule R9-8(g), the following language was proposed:

Carriers that provide DA to their customers from a third party should select a provider that updates new or changed listings within 48 hours of notification; these carriers must provide updated information to the third party provider within 24 hours of receipt.

The Commission notes that AT&T supports two business days; BellSouth, Concord, Lexcom, and Randolph support 48 hours; ALLTEL does not oppose either 24 or 48 hours; Citizens, MCI, MebTel, and QuantumShift did not take a position on this issue; the Public Staff supports 24 hours; Sprint does not agree with the provision but does not oppose it; and Verizon opposes both 24 hours and 48 hours.

The Commission notes that this requirement addresses circumstances in which the company contracts with a third party to provide DA service. This proposal would require the company to provide updates to DA information to the third party provider within 24 hours of receipt. Then the third party provider would have 48 hours to reflect the update. The Commission agrees with the Public Staff that it will not be unduly burdensome for companies to forward this information to DA providers within a 24-hour timeframe, particularly since the information is likely to be shared electronically. This requirement would require companies to simply forward updated DA information to a third-party DA provider which should not be a time-consuming or burdensome task to perform and 24 hours should be more than enough time to accomplish the requirement.

CONCLUSIONS: The Commission finds it appropriate to require that companies should provide updated DA customer information to the third-party provider within 24 hours of receipt.

UNRESOLVED ISSUE NO. 17: Should the service quality standards only apply to ILECs or to both ILECs and CLPs?

POSITIONS OF PARTIES

ALLTEL: ALLTEL believes that the same service standards should apply to CLPs as well as ILECs. ALLTEL also believes that the Commission should continually monitor the evolution of the competitive marketplace. As the marketplace becomes more competitive, market forces, rather than regulation, will drive service quality. As this occurs, ALLTEL submits that regulation and reporting regarding service objectives should be relaxed accordingly.

AT&T: AT&T did not take a position on this issue in its initial comments. In reply comments, AT&T asserted that the Commission's service quality standards should not apply to CLPs. Alternatively, AT&T maintained, in the event the Commission determines that the service objectives of Rule R9-8 should be applicable to CLPs, the Commission should exempt CLPs from the quarterly reporting requirements and associated penalties.

BELLSOUTH: If the Commission desires to mandate retail service quality standards through Rule R9-8, those standards must apply to every facilities-based company that offers basic local exchange service in North Carolina, whether they are an ILEC or a CLP. Any other conclusion would result in unreasonable discrimination. Consumers who are aware of the Commission's standards would expect the same quality of service from any facilities-based company offering basic local exchange service. Thus, all facilities-based companies should be subject to the rules and the Public Staff should monitor all companies' performance through their filed service quality results.

CITIZENS: Citizens believes that the service quality standards should apply equally to CLPs and ILECs, as well as to any other entities that are effectively providing local exchange service, either under existing technology, such as commercial mobile radio service (CMRS) providers, or for future technologies, such as Voice over Internet Protocol (VoIP) providers.

CONCORD: If service quality standards are applicable to ILECs, they must also be applicable to CLPs.

LEXCOM: Lexcom strongly believes in an even playing field. Both ILECs and CLPs should have to report.

MCI: MCI did not take a position on this issue in its initial comments. In reply comments, MCI asserted that it supports the requirement that service quality standards apply to CLPs as well as ILECs.

MEBTEL: MebTel did not take a position on this issue.

PUBLIC STAFF: The service quality standards should apply to both ILECs and CLPs.

QUANTUMSHIFT: QuantumShift did not take a position on this issue.

RANDOLPH: Randolph believes the standards should apply to both ILECs and CLPs.

SPRINT: Customer expectations and satisfaction are the ultimate standards that should be applied to all companies. The Commission's service quality standards should not be applied to CLPs.

VERIZON: The service quality standards should be identical for both ILECs and CLPs.

INITIAL COMMENTS

CONCORD: Concord noted that, by definition, service quality only has meaning when measured from the perspective of a customer. Concord noted that it can think of no reason why service quality provided to an ILEC customer should be critical to the Commission yet service quality provided to a CLP customer should be so unimportant as to not merit regulation at all. Concord argued that this disparate treatment of similarly situated customers does not make sense from a public interest perspective. Concord asserted that if the underlying notion is that service quality is competitive for CLPs, and therefore does not require regulation, then it must also be true that it is competitive for ILECs – in which case these regulations should not apply to ILECs either. Concord noted that logical consistency and fundamental competitive fairness require that service quality standards be equally applicable to all carriers.

LEXCOM: Lexcom stated that it believes that a CLP would have an unfair competitive advantage by not having to play by the same rules and regulations as the ILEC.

PUBLIC STAFF: The Public Staff stated that it believes the Commission should ensure that all telephone customers receive adequate service regardless of whether they are served by ILECs or CLPs. The Public Staff opined that while companies can compete in a number of areas, such as price, calling area scope, or services offered, the Public Staff believes that the service quality rules should specify a set of minimum requirements for adequate service for all North Carolina telephone customers. The Public Staff asserted that the proposed Rule R9-8 attached to the Joint Report recognizes the differences between ILECs and CLPs by relaxing the reporting requirement for CLPs, but requires both CLPs and ILECs to adhere to the service quality standards.

The Public Staff argued that the service quality standards should apply to both ILECs and CLPs.

RANDOLPH: Randolph noted that it believes, that in an increasingly competitive environment, regulations should be imposed in a competitively neutral manner; therefore, ILECs and CLPs should both be held to the same service quality standards, including reporting requirements.

SPRINT: Sprint maintained that the telecommunications industry has become competitive, and, for this reason, it is not necessary for the standards to apply to CLPs. Sprint argued that losses of customers and associated losses of revenues due to failures to provide adequate service are more than sufficient incentives to motivate service levels that are consistent with customer expectations.

VERIZON: Verizon stated that the service quality standards should be identical for both ILECs and CLPs for two reasons. First, Verizon noted, the ITF, which is made up of ILECs and CLPs, the Public Staff (at one time) and the Commission have previously recognized that equal reporting requirements should be imposed on ILECs and CLPs. Specifically, Verizon commented, the ITF advocated in its Final Report to the Commission that reporting of service objectives should be identical for both ILECs and CLPs. Moreover, Verizon maintained, the Public Staff originally recommended that all companies provide reports on the service quality objectives. Most important, Verizon opined, the Commission decided that the service quality standards should apply to both ILECs and CLPs, requiring service quality reports from each local exchange telephone company actually providing basic local residential and/or business exchange service to customers in North Carolina. Second, Verizon commented, an asymmetrical reporting requirement would be illegal and patently unfair. Verizon argued that Section 253(b) of TA96 allows states to impose on a competitively neutral basis requirements to ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Verizon asserted that applying the service quality standards unevenly would violate this competitive neutrality requirement. Moreover, Verizon maintained, it would unnecessarily and unfairly handicap ILECs in today's competitive telecommunications marketplace.

REPLY COMMENTS

AT&T: AT&T argued that quality of service standards such as those in Rule R9-8, and the measurement and reporting thereof, should not be imposed on CLPs for at least three reasons: (1) they unnecessarily increase the cost of providing service and have the effect of limiting consumer choice; (2) the pressures of the competitive marketplace will force CLPs to provide good quality service; and (3) CLPs lack the ability to control the quality of the services they provide because, to a large extent, CLPs rely on ILEC services and UNEs in the provision of their services to the public. Consequently, AT&T maintained, the Commission's service quality standards should not apply to CLPs.

AT&T asserted that imposing the service quality standards of Rule R9-8 on CLPs would create an unnecessary burden on CLPs without providing any meaningful benefit to

CLP customers. Indeed, AT&T argued, the imposition of such regulations would require the establishment of expensive measurement systems that would serve only to increase the cost of providing services to the public. In addition, AT&T maintained, the imposition of quality of service standards could result in limiting customer choice in an emerging competitive market rather than encouraging the development of competitive alternatives as intended by the General Assembly when it passed legislation allowing the provision of competitive local services. In G.S. § 62-2(d), the North Carolina General Assembly clothed the Commission with the authority to:

...develop regulatory policies to govern the provision of telecommunications service to the public which promote efficiency, technological innovation, economic growth, **and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment**, giving due regard to customers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service. (emphasis added).

Thus, AT&T opined, the Commission should be doing everything it can to encourage new market entrants to come to North Carolina and to increase the development of competition rather than to increase the burdens new entrants must face in an attempt to break into a market that to this day is still dominated by monopoly ILECs.

AT&T commented that it is interesting to note that none of the ILECs that filed initial comments supporting the application of service quality standards to CLPs argued that the public would benefit from such regulations. In fact, AT&T maintained, the public interest would be better served by not applying service quality regulations to CLPs. AT&T argued that one of the purposes of introducing competition into the telecommunications marketplace is to create increased consumer choice. AT&T asserted that competitors are constantly seeking ways to differentiate their services from those of their competitors. AT&T noted that this differentiation may take the form of different types of services, different prices, or differences in the quality of service provided. AT&T argued that some customers are willing to accept lower quality of service for a lower price. AT&T maintained that if the Commission limits the ability of CLPs to offer a quality of service that is less than that contained in Rule R9-8, it could be depriving consumers of the ability to choose a desirable service at a lower price than would otherwise be available. AT&T opined that by imposing regulations that narrow customer choice rather than expand the available alternatives, the Commission would be creating a roadblock to the development of competition instead of promoting "a reasonable opportunity to compete in an emerging competitive environment."

AT&T noted that Sprint agrees that service quality rules should not apply to CLPs; MebTel takes no position on the issue; Citizens and ALLTEL give no reason for their position; and the remaining ILECs filing initial comments generally contend that it is unfair to apply the requirements to ILECs alone.

AT&T asserted that service quality regulations for ILECs may serve a purpose as long as the ILECs continue to dominate the market. AT&T maintained that CLPs, on the other hand, have very little market share in North Carolina and have absolutely no market power with which they can abuse their market position. For this reason, AT&T argued, it is not unjust discrimination to impose service quality regulations on ILECs and not on CLPs. AT&T opined that, in doing so, the Commission would be creating an environment that encourages new companies to enter the North Carolina market and enhancing consumer choice consistent with the stated policy of the General Assembly.

AT&T argued that the competitive pressures of the marketplace will force CLPs to provide good quality service. AT&T noted that CLPs have a significant uphill battle in breaking into the monopoly consumer base of the ILECs. AT&T maintained that in order for a CLP to attract customers away from an ILEC, the CLP is going to have to offer the customer value for the price it charges. AT&T stated that if the customer is not satisfied with the quality of service offered or provided, he or she will stay with the ILEC or perhaps choose another CLP. Therefore, AT&T contended, if the CLP is going to remain viable in the marketplace, it is going to have to offer a quality of service that is acceptable to the consumer for the price charged. AT&T argued that, as long as there is a competitive alternative available to the consumer in the form of the ILEC, there is no need to impose quality of services regulations on CLPs that are trying to get established in the marketplace.

AT&T further maintained that CLPs compete in North Carolina mostly through the purchase of UNEs or in some cases through the resale of ILEC services. AT&T asserted that the CLP is thus dependent on the ILEC for the delivery of the underlying facilities or services used to provide telephone service to the end-user and is, to a large extent, unable to control whether it meets the service objectives of Rule R9-8. AT&T argued that, in these circumstances, it is unreasonable to hold CLPs accountable for the delivery of services by ILECs. AT&T maintained that, rather than being concerned with whether CLPs are meeting certain service objectives, the Commission's attention should more appropriately be focused on whether the ILECs are providing services to CLPs in a nondiscriminatory manner. To this end, AT&T noted, the Commission has adopted rules governing performance measures for BellSouth in Docket No. P-100, Sub 133k. AT&T stated that while it does not agree that those rules are completely adequate, they do provide a much stronger base for protecting the delivery of CLP services to end users than applying service quality regulations to CLPs that are beyond the ability of CLPs to control. Consequently, AT&T maintained, the public interest would be much better served by focusing the Commission's time and resources on BellSouth's compliance with the performance measure rules of Docket No. P-100, Sub 133k and assuring that BellSouth is not discriminating in the delivery of its services and facilities to CLPs.

AT&T noted that, for all of the reasons set forth above, the Commission should not apply the service quality standards set out in Rule R9-8 to CLPs in North Carolina. Alternatively, AT&T stated, in the event the Commission determines that the service objectives of Rule R9-8 should be applicable to CLPs, the Commission should exempt

CLPs from the quarterly reporting requirements and associated penalties based upon all of the foregoing reasons.

BELLSOUTH: BellSouth noted that, in its initial comments, it stated that any Commission-adopted service quality standards should apply to every facilities-based company that offers basic local exchange service in North Carolina, whether it is an ILEC or a CLP. Importantly, BellSouth asserted, no party filing initial comments in this proceeding disagreed that the service quality standards ultimately adopted by the Commission should be applied to ILECs and CLPs alike. [**COMMISSION NOTE:** Sprint did propose that the standards should not apply to CLPs.] BellSouth argued that it is also important, however, for the Commission to require all companies to report their results against these measurements to the Commission. BellSouth commented that the Public Staff's initial comments recommend a reporting requirement only for ILECs, and this makes no sense from an equitable or enforcement standpoint. BellSouth maintained that, without requiring all companies to report their results, how will the Public Staff or the Commission know whether companies are simply ignoring the rules? BellSouth opined that allowing such a result would create a severe competitive disadvantage for the companies who must spend the money and devote the resources needed to ensure that they are, in fact, complying with the rules and proving their compliance to the Commission. BellSouth argued that it is nonsensical for the Commission to promulgate universally-applied service quality rules and then have no means of enforcing or even monitoring them. Thus, BellSouth concluded, all ILECs and CLPs subject to the rules should be required to report their results to the Public Staff and the Commission.

MCI: MCI asserted that it has long advocated that CLPs should not be subjected by rote to the traditional governmental regulation of ILECs. MCI argued that regulation has been premised on the former de jure monopoly status, and present market share, economies of scale, exclusive marketing arrangements, and other competitive advantages enjoyed by ILECs. MCI opined that these arrangements and advantages not only create barriers to entry for CLPs, but also lessen the competitive alternatives available to consumers. MCI maintained that there are strong policy grounds, which have been recounted several times throughout the long history of this proceeding, for excusing CLPs from regulation of service quality. Nevertheless, MCI stated that it, like other CLPs, for the sake of expediency and administrative finality, supports the requirement in this proceeding that service quality standards apply to CLPs (at least those for which the CLP has control) as well as to ILECs.

MCI asserted that this requirement should not be controversial. MCI noted that what is disputed by some ILECs, however, is whether CLPs should not have to *report on a scheduled basis*. MCI stated that no one disputes that this Commission has the authority to ask a CLP to issue a report on service quality when the need and circumstances for such information arises. Thus, MCI contended, the Public Staff, following months of negotiations in this already protracted docket, has proposed a compromise resolution that should render Unresolved Issue No. 17 moot. MCI maintained that this resolution simply removes the scheduled reporting requirement,

while retaining the requirement that CLPs meet certain service quality standards. MCI argued that the Commission should approve the compromise resolution, recognize that it acknowledges the continuing supervisory role of the Commission, and bring this proceeding to conclusion.

MCI noted that, for the reasons stated, it supports the compromise resolution in this docket: that service quality standards apply, but that CLPs need not file the scheduled reports that would be required of ILECs.

MCI maintained that several ILECs contended that an “even playing field,” “fundamental competitiveness fairness,” “competitive neutrality”, and like considerations compel the same service quality reporting from CLPs as for ILECs. MCI stated that although it is not clear that these ILECs apprehend the issue correctly – as stated above, CLPs in this proceeding do not contest the authority of the Commission to supervise their service quality and do not oppose efforts to subject them to service quality standards – it is clear that these ILECs ignore the economies of scale, exclusive marketing arrangements, first mover advantages, and other advantages that they enjoy, which among other factors have resulted in an overwhelming market share advantage that ILECs enjoy in the mass market.

MCI stated that Sprint, however, broke rank with its incumbent brethren. MCI noted that Sprint stated that “(l)osses of customers and associated losses of revenues due to failures to provide adequate service are more than sufficient incentives to motivate service levels that are consistent with customer expectations.” MCI asserted that these comments recognize the present embryonic level of competition in North Carolina, particularly for residential and small business customers.

MCI footnoted that, moreover, BellSouth would require only facilities-based CLPs that offer local exchange service in North Carolina to engage in scheduled reporting. MCI commented that BellSouth at least recognized that CLPs are dependent upon the underlying ILEC for providing network service to customers. MCI stated that there are many aspects of local telephone service – for example, outages, installation, and repairs – over which dependent CLPs simply have no control. MCI stated that the Commission recognized this reality by allowing CLPs to ask the Commission for a waiver of service quality rules if the CLPs lease UNEs. MCI commented that in Ordering Paragraph No. 6 of the Commission’s November 29, 2000 *Order Denying Motion for Reconsideration But Clarifying the Commission’s September 20, 2000 Order*, the Commission stated

That resellers of basic local residential and business exchange service and companies that purchase UNEs from ILECs to provide basic local residential and business exchange service are expected to comply with the reporting requirements. However, if a carrier is not in direct control of the results of a particular objective outlined in Rule R9-8, that carrier may place an “N/A” for not applicable in the report for that particular

objective and footnote an explanation of why the results for the objective are not within the company's control. Companies are to only use "N/A" in circumstances where it is clear that results of the particular objective are not within the company's control; companies should not abuse the use of "N/A" on their reports.

MCI maintained that the purpose of regulation, then, is to act as a surrogate for marketplace regulation (i.e., competition). MCI argued that, until such time as competition is sufficiently established, Commission regulation may be necessary to protect the interests of consumers with regard to ILECs. MCI noted that the same degree of regulation is not as necessary with regard to CLPs just entering the local telephone market in North Carolina. MCI contended that unless CLPs can provide services that are better in quality and lower in price than those offered by ILECs, CLPs will not attract customers.

SPRINT: Sprint stated that service quality standards need not, and should not, apply to small companies such as most, perhaps all, North Carolina CLPs. Sprint maintained that other states such as Indiana exclude companies, CLPs and others, that do not have a minimum number of access lines as there are clear competitive alternatives to the services provided by these companies, and, especially in the case of CLP subscribers, customers have demonstrated they know how to change providers. Sprint stated that it believes that exempting companies with less than 15,000 access lines, less than 1% of total access lines in North Carolina, would be proper. Sprint noted that in practice, it expects that such an exemption would apply to most North Carolina CLPs.

DISCUSSION

The Commission notes that this issue was not specifically addressed in the *December 27, 2002 Order* because the Commission had previously ruled that service quality standards should apply to both ILECs and CLPs.

On November 29, 2000, the Commission issued its *Order Denying Motion for Reconsideration but Clarifying the Commission's September 20, 2000 Order*. The Commission's *September 20, 2000 Order* revised Rule R9-8 to incorporate a new subsection concerning reporting on the service objectives. In the *September 20, 2000 Order*, the Commission required all ILECs and CLPs actually providing service to customers in North Carolina to file monthly reports detailing the results of their compliance with each of the objectives outlined in Rule R9-8.

In the *November 29, 2000 Order*, the Commission clarified its *September 20, 2000 Order* to require that all ILECs and CLPs actually providing basic local residential and/or business exchange service to customers in North Carolina should file their service quality results monthly.

Further, in the *November 29, 2000 Order*, the Commission stated

The Commission is also clarifying that resellers of basic local residential and business exchange service and companies that purchase UNEs from ILECs to provide basic local residential and business exchange service are expected to comply with the reporting requirements. However, if a carrier is not in direct control of the results of a particular objective outlined in Rule R9-8, that carrier may place an 'N/A' for not applicable in the report for that particular objective and footnote an explanation of why the results for the objective are not within the company's control. The Commission fully expects companies only to use 'N/A' in circumstances where it is clear that the results of the particular objective are not within the company's control; companies should not abuse the use of 'N/A' on their reports.

ALLTEL, BellSouth, Citizens, Concord, Lexcom, MCI, the Public Staff, Randolph, and Verizon support applying service quality standards to both ILECs and CLPs; AT&T and Sprint oppose applying the standards to CLPs; and MebTel and QuantumShift did not take a position on this issue.

The Commission notes that Commission Rule R17-2(g) states that Rule R9-8 applies to CLPs. The Commission does not believe that any party provided any new or compelling arguments why service quality standards should not apply to both ILECs and CLPs. The Commission believes that this issue should not even be up for debate at this point in time since Rule R17-2(g) specifically requires CLPs to be subject to Rule R9-8. Further, the Commission notes that this instant issue concerns whether Rule R9-8 should apply to CLPs; the question of whether CLPs should be required to file quarterly reports is discussed in Negotiated Issue No. 1 below.

CONCLUSIONS: The Commission concludes that the service quality standards should apply to both ILECs and CLPs.

SECTION III - ISSUES NEGOTIATED AND DETAILED IN JOINT COMMENTS

On January 20, 2004, the ITF and the Public Staff filed their Joint Comments as requested in the Commission's *November 7, 2003 Order*.

The purpose of the Joint Comments was to have the Parties outline and explain the issues that the Parties negotiated wherein the result was different from that ordered by the Commission in its *December 27, 2002 Order*. The Commission notes that the Parties were allowed to negotiate on disputed issues from the *December 27, 2002 Order* and that the Parties did indeed reach agreement on many of the issues. However, some of the issues that were negotiated were settled contrary to the Commission's previous decision.

The Commission has reviewed the Joint Comments and notes the following substantive changes to Rule R9-8 the Parties have negotiated along with a Commission Conclusion on the resulting agreement:

NEGOTIATED ISSUE NO. 1: The majority of Parties proposed that Rule R9-8 should apply to both ILECs and CLPs; however, they further proposed that only ILECs should be required to file service quality reports with the Commission. The Parties stated in the Joint Comments that because of the CLPs' difficulties in reporting service quality due to their inability to obtain state-specific data, CLPs should not be required to file quarterly reports. The Parties stated that the CLPs would not be absolved from meeting the minimum service quality standards required by the Commission for all local service providers.

CONCLUSIONS: The Commission notes that the applicability of Rule R9-8 to CLPs has been discussed under Unresolved Issue No. 17. In Unresolved Issue No. 17, the Parties disagree about whether Rule R9-8 should apply to both ILECs and CLPs. However, the Parties apparently do agree that if the Commission determines that Rule R9-8 should apply to CLPs, CLPs should not be required to file quarterly reports. The Commission does not understand how a CLP can be expected to comply with Rule R9-8 service standards but not be required to file quarterly reports. If a company monitors whether it is in compliance with the standards, there must necessarily be information to support a finding of its compliance or noncompliance with the standards. Further, the Commission notes that CLPs have been filing monthly reports for service objectives since reporting was first required for both ILECs and CLPs back in 2001.

Therefore, the Commission finds it appropriate not to accept the stipulation to not require CLPs to file quarterly reports with the Commission. If state-specific results are not available, the company should be free to report N/A; however, for several measures such as Initial Customer Trouble Reports, Repeat Reports, Out-of-Service Troubles Cleared Within 24 Hours, Regular Service Orders Completed Within 5 Working Days, New Service Installation Appointments Not Met for Company Reasons, and New Service Held Orders Not Completed Within 30 Days, the Commission fails to understand how these measures would not be available on a state-specific basis. Further, the Commission finds that CLPs should continue to be allowed to report "N/A" for standards in which the CLP is not in direct control of the results.

The Commission finds it appropriate to continue to require CLPs to file service quality reports with the Commission.

NEGOTIATED ISSUE NO. 2: The Parties proposed that reports be filed quarterly rather than monthly. The Parties maintained that quarterly reports will require companies to submit reports less often, reducing their work loads and costs, and reducing the paperwork to be handled and stored by the Commission and the Public Staff. The Parties asserted that the quarterly reports will still detail monthly results, thereby allowing the Commission to review the same amount of data.

CONCLUSIONS: The Commission agrees with and supports the Parties' negotiation on this issue and concludes that the reports be filed quarterly reflecting monthly results.

NEGOTIATED ISSUE NO. 3: The Parties asserted that the Commission no longer has jurisdiction over Direct Distance Dialing Completion Rate, Intrastate Toll Transmission Loss, and Intrastate Toll Trunk Noise after the passage of Senate Bill 814 and, therefore, these measures should be removed from Rule R9-8.

CONCLUSIONS: The Commission agrees with and supports the Parties' negotiation on this issue and concludes that the service objectives relating to Direct Distance Dialing Completion Rate, Intrastate Toll Transmission Loss, and Instate Toll Trunk Noise should be removed from Rule R9-8.

NEGOTIATED ISSUE NO. 4: The Parties negotiated appropriate uniform reporting procedures for Operator "O" Answer time, Directory Assistance Answer time, Business Office Answer time, and Repair Service Answer time. In the *December 27, 2002 Order*, the Commission noted that, with the current use of menu-driven systems and IVR units, a hearing would be necessary to develop appropriate procedures. However, the Parties negotiated a complete set of uniform reporting procedures for these four service objectives. The Commission has reviewed the procedures and finds them to be reasonable and appropriate. Therefore, the Commission finds it appropriate to adopt the negotiated procedures.

CONCLUSIONS: The Commission agrees with and supports the Parties' negotiation on this issue and concludes that it is appropriate to adopt the negotiated uniform reporting procedures for Operator "O" Answer time, Directory Assistance Answer time, Business Office Answer time, and Repair Service Answer time.

NEGOTIATED ISSUE NO. 5: The Parties proposed that an ASA of 6 seconds be added to Operator "O" Answer time and Directory Assistance Answer time because it is more common than the "% in x seconds" standard previously adopted. The Parties noted that some switches cannot calculate "% in x seconds" and conversion tables have been used; the accuracy of the conversion tables is questionable and it would be expensive to update them. The Parties maintained that the 6-second ASA used is approximately equivalent to one ring, which the Task Force and Public Staff agree is a reasonable answer time for these two measures.

CONCLUSIONS: The Commission agrees with and supports the Parties' negotiation on this issue and concludes that an ASA of 6 seconds should be added to Operator "O" Answer time and Directory Assistance Answer time.

NEGOTIATED ISSUE NO. 6: The Parties proposed that the 90% within 20 seconds plus the maximum answer time standard for Business Office Answer time and Repair Service Answer time should be removed and an average speed of answer should be used. The Parties disagree about whether the ASA should be 30 seconds or 60 seconds and this is addressed in Unresolved Issue No. 8. The Task Force and the

Public Staff determined that an ASA standard was preferable to a “% in x seconds” standard. All Task Force participants indicated that they were able to calculate answertime using the ASA standard, while some Task Force members were unable to calculate answertime using the “% in x seconds” standard without using an equivalency chart. The Parties maintained that adopting an ASA standard will ensure more uniformity in companies’ calculations of answertime. No party was in favor of mandating a maximum answertime.

CONCLUSIONS: Although the Commission is not completely convinced that it is appropriate to alter the Commission’s *December 27, 2002 Order* based on the support provided by the Parties, out of consideration and respect for the negotiation that occurred on this issue, and the fact that no party supported a maximum answertime, the Commission agrees with and supports the Parties’ negotiation on this issue. Therefore, the Commission concludes that an ASA be used for Business Office Answertime and Repair Service Answertime.

NEGOTIATED ISSUE NO. 7: The Parties maintained that the Force Majeure clause should be tweaked to replace to the extent “possible” with to the extent “reasonably foreseeable”, replace “were unavoidable” with “could not reasonably have been avoided”, and replace the Commission “may” grant a waiver with the Commission “shall” grant a waiver to denote that granting of a waiver should be mandatory rather than discretionary if the carrier has shown that it has met the four criteria.

CONCLUSIONS: The Commission agrees with and supports the Parties’ negotiation on this issue.

NEGOTIATED ISSUE NO. 8: The Parties maintained that data at the wire center level should not be provided. The Parties stated that exchange level reporting should generally be adequate for the Commission and Public Staff to monitor service quality. The Parties noted that, pursuant to the section on Data Retention, the Public Staff or Commission may obtain data on a wire center level as deemed necessary.

CONCLUSIONS: The Commission agrees with and supports the Parties’ negotiation on this issue and concludes that data at the wire center level should not be required. As noted, Section (f) Data Retention will allow access to the information if it is ever deemed necessary.

NEGOTIATED ISSUE NO. 9: The Parties proposed that, for small businesses with five lines or less that are handled by a carrier’s residential service center, the carrier may include the statistics for these small businesses in the residential customer category, but must notate this inclusion and verify that there is no preferential treatment given to either class of customers in its quarterly report.

CONCLUSIONS: The Commission agrees with and supports the Parties’ negotiation on this issue and concludes that a carrier should be allowed to include statistics for small businesses with five lines or less that are handled by a carrier’s residential service

center in the residential customer category, including the notation and verification requirement.

NEGOTIATED ISSUE NO. 10: The Parties proposed that companies that serve certain customers on an individual account basis rather than by call or service center not be required to add the service quality results for those customers into the business or residential categories. However, the Parties maintained that companies acting under this provision must note in their first report which customer groups are excluded from the report and notify the Commission if this exclusion changes.

CONCLUSIONS: The Commission agrees with and supports the Parties' negotiation on this issue and concludes that companies that serve certain customers on an individual account basis rather than by call or service center are not required to add the service quality results for those customers into the business or residential categories.

NEGOTIATED ISSUE NO. 11: The Parties proposed that website reporting should be deleted. The Parties asserted that, due to the CLPs' inability to calculate state-specific results, many CLPs would be unable to post service quality information and would have to be excepted from this requirement. The Parties asserted that this would be unfair to those companies that would be required to post such information. The Parties maintained that, due to the vast difference in the size of local exchange companies, consumers could be misled by the amount of penalties that might be assessed against individual companies and make incorrect conclusions about the service quality provided by different carriers. The Parties stated that the pass/fail system could also be misleading, as it would not indicate the reason why a company failed to meet a standard or the degree to which the company failed to meet the standard.

Although the Commission understands that all of the Parties agreed to remove this requirement from Rule R9-8, the Commission does not believe that this result is appropriate. The Commission believes that it is entirely appropriate and reasonable to uphold its conclusions on website reporting as outlined in the *December 27, 2002 Order* (See pages 33-35 of the *December 27, 2002 Order*). However, the Commission finds it appropriate to hold in abeyance the specific details of the website reporting requirement and the effective date of the website reporting requirement in order to allow the Parties the opportunity to negotiate on an appropriate means to allow the public access to the service quality information that will be filed with the Commission with amended Rule R9-8. The Parties are instructed to follow the logic and intent of the *December 27, 2002 Order* concerning website reporting and to negotiate all of the specific details necessary for the Commission to implement a website reporting requirement. The Parties shall file a report with the Commission detailing the negotiations and their specific recommendations by no later than Tuesday, August 3, 2004. The Public Staff is specifically requested to facilitate the negotiation process.

CONCLUSIONS: The Commission concludes that website reporting is appropriate. The Commission upholds and affirms its decision on website reporting as outlined in the *December 27, 2002 Order*. However, the Commission finds it appropriate to hold in

abeyance the specific details of the website reporting requirement and the effective date of the website reporting requirement in order to allow the Parties the opportunity to negotiate on a appropriate means to allow the public access to the service quality information. The Parties are requested to file a report with the Commission detailing the negotiations and their specific recommendations by no later than Tuesday, August 3, 2004. The Public Staff is specifically requested to facilitate the negotiation process.

NEGOTIATED ISSUE NO. 12: The Parties proposed that the monthly reporting requirement for Initial Customer Trouble Reports, Repeat Reports, Out-of-Service Troubles Cleared Within 24 Hours, Regular Service Orders Completed Within 5 Working Days, New Service Installation Appointments Not Met for Company Reasons, and New Service Held Orders Not Completed Within 30 Days should be made more liberal so as to not require companies to file explanations for every narrow miss of the service quality standards, just the misses that are more significant. The Parties maintained that raising the threshold when such explanations are required should prevent companies from being forced to make unnecessary explanations.

CONCLUSIONS: The Commission agrees with and supports the Parties' negotiation on this issue and concludes that the thresholds for explanations of misses should be increased as negotiated by the Parties.

NEGOTIATED ISSUE NO. 13: The Parties proposed that language needs to be added to the DA section of Rule R9-8 since all carriers do not provide their own DA. The Parties proposed the following language:

. . . Carriers that provide DA to their customers from a third party should select a provider that updates new or changed listings within 48 hours of notification; these carriers must provide updated information to the third party provider within 24 hours of receipt.

The issue of providing the data in 24 hours is discussed under Unresolved Issue No. 16.

CONCLUSIONS: The Commission agrees with and supports the Parties' negotiation on this issue and concludes that it is appropriate to adopt the proposed language.

NEGOTIATED ISSUE NO. 14: The Parties proposed that because a number of incorrect directory listings are not the fault of the DA provider, refunds should not be automatic, but be available upon request by the customer.

CONCLUSIONS: The Commission agrees with and supports the Parties' negotiation on this issue and finds it appropriate to adopt the proposed language that refunds be provided upon request by the customer.

NEGOTIATED ISSUE NO. 15: The Parties proposed that if carriers meet the DA updating standard outlined in Rule R9-8, then a customer being told that there is "no

listing” should not be the fault of the carrier. Therefore, refunds should not be required for no listing.

CONCLUSIONS: The Commission agrees with and supports the Parties’ negotiation on this issue and finds it appropriate to remove the “no listing” language (i.e., refunds will not be required for “no listing”.)

NEGOTIATED ISSUE NO. 16: The Parties proposed that carriers should not be required to provide annual bill inserts to inform customers of the uniform DA refund policy because customers should be adequately informed of the policy when it is published prominently in the DA section of the local telephone directory. The Commission does not find it appropriate to accept this negotiation. The Commission believes that it is entirely appropriate to require carriers to provide annual bill inserts to inform customers of the uniform DA refund policy. The Commission believes that customer information in this regard is in the public interest. As previously noted, carriers should inform the Commission if they experience customer abuse of the DA refund policy.

CONCLUSIONS: The Commission declines to adopt the Parties’ negotiation on this issue and finds that annual bill inserts on the uniform DA refund policy should be required as outlined in the *December 27, 2002 Order*.

SECTION IV – MISCELLANEOUS

The Commission notes that Ordering Paragraph 5 of the *December 27, 2002 Order* required carriers that provide their own DA service to complete an audit of the accuracy of their DA and file a copy of the audit results with the Commission within six months.

From the filings, it does not appear that the Parties discussed this issue. Therefore, the Commission believes that it is appropriate to require carriers that provide their own DA service to complete an audit as required in the *December 27, 2002 Order*. The Commission finds that carriers should be allowed six months to complete the audit and submit the audit results to the Commission.

SECTION V - UNIFORM QUARTERLY REPORT

The Commission finds it appropriate to adopt the following uniform report (Exchange Level Form and Statewide Level Form) for carriers to file quarterly in compliance with Rule R9-8:

**COMPLIANCE WITH COMMISSION RULE R9-8
EXCHANGE LEVEL FORM
PAGE 1 OF 2**

COMPANY NAME: _____
REPORTING PERIOD: _____
EXCHANGE: _____

Description	Objective	Month 1	Month 2	Month 3
Initial Customer Trouble Reports	4.75 or less per 100 total access lines			
Repeat Reports	1.0 report or less per 100 total access lines			
Out-of-Service Troubles Cleared within 24 Hours – Business	95% or more			
Out-of-Service Troubles Cleared within 24 Hours – Residential	95% or more			
Out-of-Service Troubles Cleared within 24 Hours – All North Carolina	95% or more			
Regular Service Orders Completed Within 5 Working Days - Business	90% or more			
Regular Service Orders Completed Within 5 Working Days – Residential	90% or more			
Regular Service Orders Completed Within 5 Working Days – All North Carolina	90% or more			
New Service Installation Appointments Not Met for Company Reasons – Business	5% or less			
New Service Installation Appointments Not Met for Company Reasons – Residential	5% or less			

**COMPLIANCE WITH COMMISSION RULE R9-8
EXCHANGE LEVEL FORM
PAGE 2 OF 2**

COMPANY NAME: _____
REPORTING PERIOD: _____
EXCHANGE: _____

Description	Objective	Month 1	Month 2	Month 3
New Service Installation Appointments Not Met for Company Reasons – All North Carolina	5% or less			
New Service Held Orders Not Completed Within 30 Days – Business	0.1% or less of total access lines			
New Service Held Orders Not Completed Within 30 Days – Residential	0.1% or less of total access lines			
New Service Held Orders Not Completed Within 30 Days – All North Carolina	0.1% or less of total access lines			

OTHER: If explanations/comments/notes are necessary in compliance with Rule R9-8 to explain results, please indicate and attach such explanations/comments/notes.

**COMPLIANCE WITH COMMISSION RULE R9-8
STATEWIDE LEVEL FORM
PAGE 1 OF 1**

COMPANY NAME: _____
REPORTING PERIOD: _____

Description	Objective	Month 1	Month 2	Month 3
Operator "O" Answer time	90% or more of calls answered within 10 seconds or ASA of 6 seconds			
Directory Assistance Answer time	90% or more of calls answered within 10 seconds or ASA of 6 seconds			
Business Office Answer time – Business	ASA of 30 seconds			
Business Office Answer time – Residential	ASA of 30 seconds			
Business Office Answer time – All North Carolina	ASA of 30 seconds			
Repair Service Answer time – Business	ASA of 30 seconds			
Repair Service Answer time – Residential	ASA of 30 seconds			
Repair Service Answer time – All North Carolina	ASA of 30 seconds			

OTHER: If explanations/comments/notes are necessary in compliance with Rule R9-8 to explain results, please indicate and attach such explanations/comments/notes.

SECTION VI - AMENDED RULE R9-8

Overall, the Commission adopts amended Rule R9-8, as follows. The original Rule R9-8 as adopted by the Commission in its *December 27, 2002 Order*, has been underlined to indicate additions and struck through to indicate deletions.

Rule R9-8. Service objectives for regulated local exchange telephone companies and competing local providers (CLPs).

(a) Service Objectives. Each regulated local exchange telephone company and CLP shall perform and provide service in accordance with the following uniform service objectives:

Measure No.	Description	Objective
1	Intraoffice Completion Rate	99% or more
2	Interoffice Completion Rate	98% or more
3	Direct Distance Dialing Completion Rate	95% or more
4 <u>3</u>	EAS Transmission Loss	95% or more between 2 and 10 dB
5	Intrastate Toll Transmission Loss	95% or more between 3 and 12 dB
6 <u>4</u>	EAS Trunk Noise	95% or more 30 dBrc or less
7	Intrastate Toll Trunk Noise	95% or more 33 dBrc or less
8 <u>5</u>	Operator "O" Answer time	90% or more of calls answered within 10 seconds <u>or ASA of 6 seconds</u>
9 <u>6</u>	Directory Assistance Answer time	85% or more of calls answered within 10 seconds <u>or ASA of 6 seconds</u>
10 <u>7</u>	Business Office Answer time	90% or more within 20 seconds PLUS an absolute maximum answer time to be determined later <u>ASA of 30 seconds</u>
11 <u>8</u>	Repair Service Answer time	90% or more within 20 seconds PLUS an absolute maximum answer time to be determined later <u>ASA of 30 seconds</u>
12 <u>9</u>	Initial Customer Trouble Reports	4.75 or less per 100 total access lines
13 <u>10</u>	Repeat Reports	1.0 report or less per 100 total access lines
14 <u>11</u>	Out-of-Service Troubles Cleared within 24 Hours	95% or more

Measure No.	Description	Objective
15 <u>12</u>	Regular Service Orders Completed within 5 Working Days	90% or more
16 <u>13</u>	New Service Installation Appointments Not Met for Company Reasons	5% or less
17 <u>14</u>	New Service Held Orders Not Completed within 30 days	0.1% or less of total access lines

(b) This rule shall not preclude flexibility in considering future circumstances that may justify changes in or exceptions to these service objectives.

(c) Force Majeure. A company may seek a waiver of part or all of Rule R9-8 due to force majeure. To request a waiver, a company should file adjusted data and unadjusted data along with its waiver request with the Commission which includes ~~appropriate data to support its request~~. In order to secure Commission approval, the waiver request should clearly demonstrate that (1) the force majeure event was sufficiently serious and unusual to warrant adjustment of the reported monthly service quality statistics, including a detailed description of the adverse consequences of the event on the ratepayers' service and the company's facilities; (2) to the extent possible reasonably foreseeable, the company prudently planned and prepared in advance for such emergencies; (3) despite these plans and preparations, and the best efforts of the company personnel before, during, and after the event, failures to satisfy the service objectives ~~were unavoidable~~ could not reasonably have been avoided; **and** (4) the extent and nature of the adjustments requested are appropriate for the circumstances. The Commission may shall grant waiver requests if the Commission finds that all four criteria have been met.

(d) Reporting Requirement. Each regulated local exchange telephone company and CLP actually providing basic local residential and/or business exchange service to customers in North Carolina shall file an original, ~~and five (5)~~ three (3) hard copies, and ~~one two~~ two electronic ~~copy~~ copies on diskette of a report each ~~month~~ calendar quarter with the Chief Clerk of the Commission detailing the monthly results of its compliance with Measures ~~8 – 17~~ 5 – 14 as set forth in this Rule. The Chief Clerk's Office shall forward one hard copy and one electronic copy to the Public Staff – Communications Division. Companies should reflect the company name as certified by the Commission. Additionally, the hard copies and electronic copies on diskette should be clearly marked with the company name, the docket number, and the ~~report month~~ reporting period. The Commission will specify the format of the report.

Each regulated local exchange company and CLP shall report its performance results for the following six objectives on an exchange ~~and/or wire center~~ level:

- ▶ Initial Customer Trouble Reports (Measure 12 9);
- ▶ Repeat Reports (Measure 13 10);
- ▶ Out-of-Service Troubles Cleared Within 24 Hours (Measure 14 11);
- ▶ Regular Service Orders Completed Within 5 Working Days (Measure 15 12);
- ▶ New Service Installation Appointments Not Met for Company Reasons (Measure 16 13); and
- ▶ New Service Held Orders Not Completed Within 30 Days (Measure 17 14).

COMMISSION NOTE: ~~This requirement would only be in effect for a one-year period at which time the Commission would make a determination whether the requirement should continue. After one year, companies may petition the Commission for exemption from the requirement to report these results on an exchange level.]~~

Each regulated local exchange company and CLP that uses separate call or service centers or service representatives to provide service to their business and residential customers shall file performance results for the following measures for the following categories of customers: (1) all North Carolina business¹ customers; (2) all North Carolina residential customers; and (3) all North Carolina customers:

- ▶ Business Office Answertime (Measure 10 7);
- ▶ Repair Service Answertime (Measure 11 8);
- ▶ Out-of-Service Troubles Cleared Within 24 Hours (Measure 14 11);
- ▶ Regular Service Orders Completed Within 5 Working Days (Measure 15 12);
- ▶ ~~Customer~~ New Service Installation Appointments Not Met for Company Reasons (Measure 16 13); and
- ▶ New Service Held Orders Not Completed Within 30 Days (Measure 17 14).

If a company's residential call or service centers handle the calls or service for small businesses of five lines or less, the company may include the statistics for these small businesses in the residential customer category, but must note this inclusion and verify that there is no preferential treatment given to either class of customers in its quarterly report.

Companies are not required to report statistics for customer groups that are not served by call or service centers, but on an individual account basis. In the first report following the effective date of the amendments to this rule, each company should note which customer groups are excluded from the report and notify the Commission if customer groups that are excluded should change.

COMMISSION NOTE: ~~This requirement would only be in effect for a one-year period at which time the Commission would make a determination whether the requirement should continue. After one year, companies may petition the Commission for exemption~~

¹ Companies are not required to report statistics for business customer groups that are not served by service or repair centers, but on an individual account basis. In the first report under the new rule, the company should note what business customer groups are excluded. If the company should thereafter change what business groups are excluded, it should note the change on the first subsequent report.

from the requirement to separately report residential, business, and combined residential and business results for these six objectives.]

This ~~The~~ quarterly report shall be filed no later than twenty (20) days after the last day of the ~~month~~ quarter covered by the report and the person submitting the report shall verify its accuracy under oath. Such verification shall be in the following form:

**VERIFICATION UNDER OATH
REGARDING ACCURACY OF SERVICE OBJECTIVES REPORT**

I, _____, state and attest that the attached Service Objectives Report is filed on behalf of _____ (Name of Public Utility) as required by North Carolina Utilities Commission Rule R9-8; that I have reviewed said Report and, in the exercise of due diligence, have made reasonable inquiry into the accuracy of the information provided therein; and that, to the best of my knowledge, information, and belief, all of the information contained therein is accurate and true, no material information or fact has been knowingly omitted or misstated therein, and all of the information contained in said Report has been prepared and presented in accordance with all applicable North Carolina General Statutes, Commission Rules, and Commission Orders.

Signature of Person Making Verification

Job Title

Date

Subscribed and sworn before me this the _____ day of _____, 200_.

Notary Public

My Commission Expires: _____

~~(e) Website Reporting. Each regulated local exchange telephone company and CLP shall post on its website on a quarterly basis, beginning on March 31, 2003, the following information:~~

- ~~(1) a pass/fail statement with respect to Measures 8 through 17 of Rule R9-8(a), as applicable to the company, and~~
- ~~(2) a listing of any penalties paid by a company for service quality violations, the amount of such penalties, and the service objective(s) involved.~~

~~The Public Staff shall also post on its website on a quarterly basis, beginning March 31, 2003, a pass/fail statement with respect to Measures 8 through 17 of Rule R9-8(a) together with a listing of any penalties for service quality violations, for all companies required to post such data.~~

COMMISSION NOTE: A website reporting section will be added by the Commission at a later date after the Parties have negotiated all of the specific details.

~~(f e) Data Retention. Each local exchange company and CLP is required to retain complete records of the data collected and procedures used to calculate each objective service quality performance result for a minimum of one year from the date a report is filed with the Commission. Within this one-year period, local exchange companies and CLPs will provide, upon reasonable request by the Public Staff or Commission, breakdowns by wire center of their monthly service quality results for Measures 9 -14. If a company can show that it is unable to provide wire center level data, it may provide data at the most granular level possible, such as at the switch level.~~

~~(g f) Uniform Measurement Procedures. Each company shall adhere to the following uniform measurement procedures when calculating its service objectives:~~

~~**COMMISSION NOTE:** Procedures for Operator "O" answertime (Measure 8), directory assistance answertime (Measure 9), business office answertime (Measure 10), and repair service answertime (Measure 11) will be included after final resolution following an evidentiary hearing on these measures.~~

Answertimes - General Considerations

~~Companies are expected to engineer the switching and interoffice facilities they use to provide operator "O", directory assistance, business office services, and repair services to customers in order to minimize the possibility of lost, misdirected, or abandoned calls and to keep customer delays to a minimum, consistent with Commission requirements and industry standards. All facilities, including network, ports, and trunks, used for provision of these services shall be engineered to provide a maximum blocking probability of one percent (1%) or less. No call that has been directed to a live operator or service representative queue should be blocked from entering the queue or deflected (abandoned by company action without consent of the calling party) after it has entered a queue.~~

Callers to operator “O”, directory assistance, business office, and repair service must be explicitly advised that they may press a “O” at any time during the call and have the call transferred to a live attendant if the respective menus exceed 45 seconds. All menu options, including any sub-menus, must be used in the calculation of the 45 seconds.

Where an opt-out message is required, the option must be offered within the first 45 seconds of the initial menu. There is no requirement for offering the opt-out message when a menu, including sub-menus, is 45 seconds or less. Calls initially directed to a menu shall be transferred to a live attendant or a live attendant queue immediately if the customer presses a key to request the transfer or within 10 seconds if the customer fails to interact with the menu system following any prompt by pressing a key of a Dual-Tone Multi-Frequency (DTMF) telephone keypad or providing a voice response.

Any company that obtains its operator “O” service, directory assistance, business office service, or repair service from another source shall identify the company that actually provides the service in its monthly report. The company that provides service to the customer is responsible for selecting a service provider that furnishes answertime service that satisfies Commission requirements.

Companies must ensure that the monthly service quality statistics they report to the Commission reflect the performance they provide to North Carolina customers. Companies that submit performance results to the Commission reflecting regionwide or nationwide performance must be prepared to demonstrate to the Commission that the performance they provide to their North Carolina customers is equivalent to the performance they report on a regionwide or nationwide basis.

Companies without automatic answertime testing may evaluate their answertime performance by manually placing test calls as long as they place a sufficient number of calls at appropriate times to ensure that a statistically valid and representative sample is obtained each month. These companies should notate on their reports that their answertimes are calculated through random sampling and should describe the methodology used, including the number of test calls completed per month and the times such calls were made.

Operator “O” Answertime (Measure 5):

Measured quantity: (a) The percentage of operator “O” calls from North Carolina each month that reach a live operator within 10 seconds; or (b) the average length of time it takes for calls from North Carolina to operator “O” telephone numbers to be answered each month.

Measurement procedures:

(1) For calls routed directly to live operators (no initial menu): Each answertime measurement shall begin at the instant the call arrives at the switch serving the operator

service positions and continue until a live operator prepared to offer immediate assistance answers the call. The answer time for the call is the interval between these two time measurements. Companies may utilize a recorded branding announcement, not over 10 seconds in length, after the call has reached the switch. The timing for a branded call will begin at the end of the recorded announcement and continue until a live operator prepared to offer immediate assistance answers the call. The answer time for the call is the interval between these two time measurements.

(2) For calls initially routed to an automated menu: Each answer time measurement shall begin at the instant the call enters the queue leading to a live operator and continue until a live operator prepared to offer immediate assistance answers the call. The answer time for the call is the interval between these two time measurements.

(3) For calls initially routed to an automated menu and handled without the intervention of a live operator: The answer time for these calls should be counted as one second.

The monthly performance figure reported to the Commission may be calculated as a % in x seconds or as an average speed of answer.

(a) % in x seconds format: Operator "O" answer time =

$$\frac{100 \times \text{Total Operator "O" calls with answer times of 10.0 seconds or less}}{\text{Total calls routed to live "O" operators}}$$

Companies shall exclude from the numerator and denominator of this calculation data for all calls in which the caller abandons the call within 10 seconds after it (1) arrives at the switch serving the operator service positions (for calls routed directly to a live operator) or (2) enters the queue leading to a live "O" operator (for calls initially routed to a menu). The operator "O" answer time calculation shall reflect all other "O" calls that are routed to live operators, including calls abandoned after 10 seconds.

(b) Average speed of answer format: Operator "O" answer time =

$$\frac{\text{Sum of queue holding times for all Operator "O" calls}}{\text{Total Operator "O" calls}}$$

Monthly reporting requirement: Companies shall report either the percentage of Operator "O" calls from North Carolina answered within 10 seconds by a live "O" Operator or their Operator "O" average speed of answer using the appropriate formula set forth above to the nearest tenth of a percent.

Directory Assistance (DA) Answer time (Measure 6):

Measured quantity: (a) The percentage of calls from North Carolina to all publicly available local DA telephone numbers each month that access a live DA operator within 10 seconds; or (b) the average length of time it takes for calls from North Carolina to all

publicly available local DA telephone numbers to be answered each month.

Measurement procedures:

(1) For calls routed directly to live DA operators (no initial menu): Each answertime measurement shall begin at the instant the call arrives at the switch serving the DA operator positions and continue until a live DA operator prepared to offer immediate assistance answers the call. The answertime for the call is the interval between these two time measurements. Companies may utilize a recorded branding announcement, not over 10 seconds in length, after the call has reached the switch. The timing for a branded call will begin at the end of the recorded announcement and continue until a live DA operator prepared to offer immediate assistance answers the call. The answertime for the call is the interval between these two time measurements.

(2) For calls initially routed to an automated menu: Each answertime measurement shall begin at the instant the call enters the queue leading to a live DA operator and continue until a live DA operator prepared to offer immediate assistance answers the call. The answertime for the call is the interval between these two time measurements.

(3) For calls initially routed to an automated menu and handled without the intervention of a live DA operator: The answertime for these calls should be counted as one second.

The monthly performance figure reported to the Commission may be calculated as a % in x seconds or as an average speed of answer.

(a) % in x seconds format: DA answertime=

$$\frac{100 \times \text{Total number of DA calls with answertimes of 10.0 seconds or less}}{\text{Total calls made to DA and routed to live operators}}$$

Companies shall exclude from the numerator and denominator of this calculation data for all calls in which the caller abandons the call within 10 seconds after it (1) arrives at the switch serving the live DA operator positions (for calls routed directly to a live DA operator) or (2) enters the queue leading to a live DA operator (for calls initially routed to a menu). The DA answertime calculation shall reflect all other DA calls that are routed to live DA operators, including calls abandoned after 10 seconds.

(b) Average speed of answer format: DA answertime =

$$\frac{\text{Sum of queue holding times for all DA calls}}{\text{Total DA calls}}$$

Monthly reporting requirement: Companies shall report either the percentage of DA calls from North Carolina answered within 10 seconds by a live DA operator or their DA average speed of answer using the appropriate formula set forth above to the nearest tenth of a percent.

Business Office Answertime (Measure 7):

Measured quantity: The average length of time it takes for calls from North Carolina to all publicly available company business office telephone numbers to be answered each month.

Measurement procedures:

(1) For calls routed directly to live business office representatives (no initial menu): Each answertime measurement shall begin at the instant the call arrives at the switch serving the business office representative positions and continue until a live business office representative prepared to offer immediate assistance answers the call. The answertime for the call is the interval between these two time measurements.

(2) For calls initially routed to an automated menu and then routed to a live business office representative: Answertime measurement shall begin at the instant the call enters the queue leading to a live business office representative and continue until a live business office representative prepared to offer immediate assistance answers the call. The answertime for the call is the interval between these two time measurements.

(3) For calls initially routed to an automated menu and handled without the intervention of a live business office representative: The answertime for these calls should be counted as one second.

The monthly performance figure reported to the Commission shall be calculated as follows:

Business office answertime =

$$\frac{\text{Sum of queue holding times for all business office calls}}{\text{Total business office calls}}$$

Live business office representatives are expected to be available to handle incoming calls from North Carolina for a minimum of nine hours per day Monday through Friday, excluding company holidays.

Monthly reporting requirement: Companies shall report their business office average speed of answer using the formula set forth above to the nearest tenth of a percent.

Repair Service Answertime (Measure 8):

Measured quantity: The average length of time it takes for calls from North Carolina to all publicly available company repair service telephone numbers to be answered each month.

Measurement procedures:

(1) For calls routed directly to live repair service representatives (no initial menu): Each answertime measurement shall begin at the instant the call arrives at the switch serving the repair service representative positions and continue until a live repair service representative prepared to offer immediate assistance answers the call. The answertime for the call is the interval between these two time measurements.

(2) For calls initially routed to an automated menu and then routed to a live repair service representative: Answertime measurement shall begin at the instant the call enters the queue leading to a live repair service representative and continue until a live repair service representative prepared to offer immediate assistance answers the call. The answertime for the call is the interval between these two time measurements.

(3) For calls initially routed to an automated menu and handled without the intervention of a live repair service representative: The answertime for these calls should be counted as one second.

The monthly performance figure reported to the Commission shall be calculated as follows:

Repair service answertime =

$$\frac{\text{Sum of queue holding times for all repair service calls}}{\text{Total repair service calls}}$$

For carriers with 10,000 access lines or more, live repair service representatives are expected to be available to handle incoming calls from North Carolina customers 24 hours a day, seven days a week.

Monthly reporting requirement: Companies shall report their repair service average speed of answer using the formula set forth above to the nearest tenth of a percent.

Trouble Reports, Service Orders, and Customer Appointments – General Considerations

A trouble report is defined as “any report from a subscriber or end user of telephone service to the telephone company indicating improper functioning or defective conditions with respect to the operation of telephone facilities over which the telephone company has control.” Such reports shall be date and time stamped immediately upon

receipt and date and time stamped again immediately after they the troubles have been cleared by company personnel. **Note:** Whenever Rule R9-8 requires a date and/or time stamp, the date and/or time stamp may be recorded electronically or otherwise so long as the date and/or time is saved for future reference.

Service orders and new service installation appointment requests shall also be date and time stamped immediately upon receipt and again after the service order has been completed or the new service installation appointment has been met.

Reported troubles that involve different access lines shall be regarded as separate troubles, even if the access lines terminate at the same premises, and/or the troubles result from a common cause, such as damaged cable or defective common equipment at a central office.

Each company shall file with its initial quarterly report a detailed list of the specific categories of troubles, service orders, and appointments it considers excludable for purposes of reporting trouble reports, service ordering, or appointment statistics. This list should reflect exclusion of such categories as inside wiring, terminal equipment, voice mail, and long distance services. Each company shall notify the Commission promptly in writing of any changes to this list.

Subsequent reports and duplicate reports of previously reported troubles that have not been cleared by the company shall not be included in either initial or repeat trouble report totals.

Initial Customer Trouble Reports (Measure 12 9):

Measured quantity: The number of initial troubles reported by telephone company subscribers in proportion to the number of total company access lines.

Company measurement procedures: Companies should continuously track the initial trouble reports that are received by their trouble reporting center(s). The statistic reported to the Commission shall be computed by taking the count of initial troubles reported in a given area between 12:00 midnight at the beginning of the first day of the calendar month and 12:00 midnight at the end of the last day of the same month, dividing this figure by the total access lines in service in that same area at the end of the last day of the month, and multiplying the quotient by 100.

$$\frac{\% \text{ initial troubles per } 100 \text{ access lines}}{100 \text{ access lines}} = \frac{100 \times \text{initial troubles reported during month}}{\text{Total access lines in service at the end of month}}$$

Initial customer trouble reports =

$$\frac{100 \times \text{initial trouble reports received during month}}{\text{Total access lines in service at the end of month}}$$

Troubles associated with nonregulated equipment, products, or services, and subsequent reports of the same trouble that are made after the initial report has been received but before the company has cleared the trouble condition should be excluded from the numerator of this formula. Companies shall identify in their ~~monthly~~ quarterly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for initial trouble reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown.

In the event a company systematically excludes the initial troubles reported by a class or classes of customers (for example, large business customers) from the troubles counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its ~~monthly~~ quarterly service quality report any deviation between the access line count used for monthly reporting of initial troubles per 100 access lines and the total access line count which it furnishes each month in its access line report.

Monthly Reporting requirement: All companies shall file statistics on initial customer trouble reports per 100 total access lines. Figures shall be reported to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area, and each exchange, ~~and each wire center, if an exchange has multiple wire centers.~~ If the monthly figure for any ~~wire center or~~ exchange exceeds ~~4.75~~ 7.125 per 100 access lines, a brief explanation should be provided for the failure to meet this objective.

Repeat Reports (Measure 13 10):

Measured quantity: The number of repeat troubles reported by telephone company subscribers in proportion to the number of company access lines.

Company measurement procedures: Companies should continuously track the repeat trouble reports that are reported to their trouble reporting center(s). A repeat trouble is a trouble reported on an access line for which another trouble or troubles has been reported within the preceding 30 days and subsequently cleared. The statistic reported to the Commission shall be computed by taking the count of repeat troubles reported in a given area between 12:00 midnight at the beginning of the first day of the calendar month and 12:00 midnight at the end of the last day of the same month, dividing this figure by the total access lines in service in that same area at the end of the last day of the month, and multiplying the quotient by 100.

$$\frac{\% \text{ of repeat troubles per } 100 \text{ access lines}}{\text{Total access lines in service at end of month}} = \frac{100 \times \text{repeat troubles reported during month}}{\text{Total access lines in service at end of month}}$$

Repeat customer trouble reports =

$$\frac{100 \times \text{repeat trouble reports received during month}}{\text{Total access lines in service at end of month}}$$

Repeat troubles associated with nonregulated equipment, products, or services shall be excluded from the count appearing in the numerator of this formula. Companies shall identify in their ~~monthly~~ quarterly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for repeat trouble reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown.

In the event that a company systematically excludes the repeat troubles reported by a class or classes of customers (for example, large business customers) from the troubles counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its ~~monthly~~ quarterly service quality report any deviation between the access line count used for monthly reporting of repeat troubles per 100 access lines and the total access line count which it furnishes each month in its access line report.

Monthly reporting requirement: All companies shall file statistics on repeat customer trouble reports per 100 access lines. Figures shall be reported to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area, and for each exchange, ~~and each wire center, if an exchange has multiple wire centers.~~ If the monthly figure for any ~~wire center or exchange~~ exceeds ~~1.0~~ 1.5 per 100 access lines, a brief explanation should be provided for the failure to meet this objective.

Out-of-Service Troubles Cleared Within 24 Hours (Measure 14-11):

Measured quantity: The percentage of total out-of-service troubles that are cleared within 24 hours during the reporting month.

Company measurement procedures: Companies should continuously track the out-of-service troubles (troubles involving inability to make outgoing calls or receive incoming calls, or line impairments so severe that they render voice communication impossible) that are reported by company subscribers and end users. Each out-of-service trouble report should be date and time stamped immediately upon receipt and date and time stamped immediately after the trouble condition is cleared. The time taken to clear the trouble is the difference between these two times. To obtain the reported statistic, the company shall count the number of out-of-service troubles that were was cleared during the calendar month and within 24 hours of their receipt, and divide this figure by the total number of out-of-service trouble reports cleared during the

calendar month, and then multiply by 100 to obtain the percentage cleared within 24 hours:

$$\% \text{ out-of-service troubles} = \frac{100 \times \text{total out-of-service troubles cleared within 24 hours during month}}{\text{Total out-of-service troubles cleared during month}}$$

Out-of-service troubles cleared within 24 hours =

$$\frac{100 \times \text{total out-of-service troubles cleared within 24 hours during month}}{\text{Total out-of-service troubles cleared during month}}$$

Troubles associated with nonregulated equipment, products, or services and troubles that do not involve out-of-service conditions shall be excluded from the troubles counted in the numerator and denominator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for out-of-service trouble reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown. Troubles in which the customer specifically requested an appointment beyond 24 hours shall be excluded from the troubles counted in the numerator and denominator of this formula.

Monthly reporting requirement: All companies shall file statistics on out-of-service troubles cleared within 24 hours of receipt, reported to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area, and for each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange is below ~~95%~~ 80%, a brief explanation should be provided for the failure to meet this objective.

Regular Service Orders Completed Within 5 Working Days (Measure 45 12):

Measured quantity: The percentage of regular service orders that are completed during any calendar month within five working days of receipt by the company.

Company measurement procedures: Companies should continuously track the receipt and completion dates and times of all regular service orders (service orders placed by residential customers and by business customers with five or fewer access lines). Each regular service order should be date and time stamped immediately upon receipt by the company and date and time stamped immediately after the order has been completed. The reported statistic shall be calculated as follows:

$$\% \text{ of regular service orders completed within 5 working days} = \frac{100 \times \text{orders completed during month within 5 working days of receipt}}{\text{Total orders completed during month}}$$

Regular service orders completed within 5 working days =

$$\frac{100 \times \text{regular service orders completed during month within 5 working days of receipt}}{\text{Total regular service orders completed during month}}$$

For purposes of this calculation, "working days" shall be considered to be all days except Saturdays, Sundays, New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided these are observed as paid company holidays.

Orders for nonregulated equipment, products, or services shall be excluded from both the numerator and denominator of this formula. Companies shall identify in their ~~monthly~~ quarterly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for regular service order reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown. Orders wherein a customer specifically requests an appointment beyond 5 days and/or the delay was specifically and solely caused by the customer should be excluded from both the numerator and denominator of this formula.

Monthly reporting requirement: All companies shall report the percentage of regular service orders completed during the calendar month within five working days of receipt by the company. Figures shall be reported to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area, and for each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange is below ~~90.0%~~ 80%, a brief explanation should be provided for the failure to meet this objective.

New Service Installation Appointments Not Met for Company Reasons (Measure 16 13):

Measured quantity: The percentage of customer new service installation appointments that are scheduled to be completed during the calendar month but are missed due to company reasons.

Company measurement procedures: Companies shall maintain a record of the customer new service installation appointments that are scheduled to be completed during each calendar month. The company shall track the scheduled dates and times for these appointments and the actual completion dates and times and, for those appointments that are not kept, shall maintain a detailed record of the reason(s) for failure to keep them. The percentage of customer new service installation appointments missed during the calendar month due to company reasons shall be calculated as follows:

$$\frac{\% \text{ of customer appointments not met for company reasons}}{\text{Customer appointments scheduled to be completed}} = \frac{100 \times \text{customer appts not completed because of company reasons}}{\text{Customer appointments scheduled to be completed}}$$

New service installation appointments not met for company reasons =

100 x new service installation appointments not met because of company reasons
New service installation appointments scheduled to be met

Any ~~customer~~ new service installation appointment missed due to customer actions shall be excluded from the numerator of this formula.

Appointments associated with installation or moving of, or changes or repairs to, nonregulated equipment, products, or services shall be excluded from the numerator and denominator of this formula. Companies shall identify in their ~~monthly~~ quarterly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for customer appointments reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown.

Companies, at a minimum, shall offer customers scheduling premises appointments the opportunity to select from a set of two or more four-hour appointment “windows” that will be made available for each day that appointments are being scheduled. An appointment will be considered “missed” if the company representative responsible for performing the premises work fails to arrive at the premises and begin work within the appointment window, or if the representative fails to complete the requested work by 12:00 midnight at the end of the appointment date.

Monthly reporting requirement: Companies shall file the percentage of total ~~customer~~ new service installation appointments not met during the month for company reasons to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area, ~~and for each exchange, and each wire center, if an exchange has multiple wire centers.~~ If the monthly figure for any ~~wire center or exchange exceeds 5.0%~~ 7.5%, a brief explanation should be provided for the failure to meet this objective.

New Service Held Orders Not Completed Within 30 Days (Measure 17 14):

Measured quantity: The number of new access line orders that, at any time during the calendar month, have been held for over 30 calendar days following receipt, in proportion to the total company access lines in service.

Company measurement procedures: Companies shall date and time stamp each new service order immediately upon receipt and shall identify and count all orders during the calendar month that have not been completed within 30 days from the date and time they were received. Each such order shall be counted as a new service held order not

completed within 30 days. The total number of new service held orders not completed within 30 days shall be reported to the Commission as a percentage of total company access lines as of midnight at the end of the last day of the month:

$$\% \text{ of new service held orders not completed within 30 days} = \frac{100 \times \text{orders not completed within 30 days at any time during month}}{\text{Total access lines in service at the end of month}}$$

New service held orders not completed within 30 days =

$$\frac{100 \times \text{new service orders not completed within 30 days at any time during month}}{\text{Total access lines in service at the end of month}}$$

Delays caused by the customer that prevent the company from completing an order within 30 days of receipt shall be excluded from the numerator of this formula. Further, orders with customer-requested appointments beyond 30 days shall be excluded from the numerator of this formula.

New service orders for nonregulated equipment, products, or services shall be excluded from the numerator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for new service held order reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown.

In the event a company systematically excludes the new service held orders for a class or classes of customers (for example, large business customers) from the held orders counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its monthly quarterly service quality report any deviation between the access line count used for monthly reporting of held orders and the total access line count which it furnishes each month in its access line report.

Monthly reporting requirement: Companies shall report the percentage of new service held orders not completed within 30 days, to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area, and for each exchange, and each wire center, if an exchange has multiple wire centers. If the monthly figure for any wire center or exchange is above 0.1% 0.15% of total access lines, a brief explanation should be provided for the failure to meet this objective.

(h g) Directory Assistance Listing Updates. Carriers must update their DA customer listings in any directory database the company maintains and/or controls within 48 hours of a service order resulting in a new or changed listing, excluding

Saturdays, Sundays, and holidays or within 48 hours excluding Saturdays, Sundays, and holidays of either notification of such a new or changed listing or receipt of a completed service order from another carrier or DA provider. Carriers that provide DA to their customers from a third party should select a provider that updates new or changed listings within 48 hours of notification; these carriers must provide updated information to the third party provider within 24 hours of receipt.

(i h) Directory Assistance Refunds. Carriers are required to provide DA refunds, upon request, for an incorrect listing or no listing provided to a DA customer. Carriers are further required to provide an annual bill insert to customers informing them of the uniform DA refund policy and to publish the uniform DA refund policy prominently in the directory assistance section of each local telephone directory.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R9-8 shall be amended as reflected in Section VI of this Order effective July 1, 2004.

2. That the first quarterly reports due under revised Rule R9-8 shall be filed by no later than October 20, 2004 and reflect the results for July, August, and September 2004.

3. That Companies are not required to file the monthly reports in the interim. The next report due will be October 20, 2004.

4. That no later than Tuesday, August 3, 2004, the Parties shall file a report with the Commission detailing the negotiations and their specific recommendations on website reporting. The Commission upholds and affirms its decision on website reporting as outlined in the *December 27, 2002 Order*. However, the Commission finds it appropriate to hold in abeyance the specific details of the website reporting requirement and the effective date of the website reporting requirement in order to allow the Parties the opportunity to negotiate on a appropriate means to allow the public access to the service quality information.

5. That carriers that provide their own DA service shall complete an audit of the accuracy of their DA and file a copy of the audit results with the Commission by no later than December 3, 2004.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of June, 2004

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Patricia Swenson".

Patricia Swenson, Deputy Clerk

Commissioner Robert V. Owens, Jr. dissents, in part, on Unresolved Issue No. 2 and Negotiated Issue No. 7. Specifically, Commissioner Owens believes that the last sentence of the Force Majeure Clause should read, "The Commission may grant waiver requests if the Commission finds that all four criteria have been met."

Commissioner Michael S. Wilkins concurs on Unresolved Issue No. 8.

Commissioner J. Richard Conder and Commissioner Michael S. Wilkins dissent on Negotiated Issue No. 11 (website reporting).

bp060304.01

COMMISSIONER MICHAEL S. WILKINS, CONCURRING: With this order, I take issue to answer times that we invoke on the Telephone Companies. In my opinion, I don't care if the phone is answered in 20 seconds, 30 seconds or 60 seconds. What I am most concerned about is how long it takes me to get the proper person on the line that can resolve my problem or complaint in a timely manner. If the phone is answered in 15 seconds then I am transferred to another person after holding for five (5) minutes and then still transferred once again and hold for another additional (3) three minutes before finally arriving at the appropriate service person that can actually resolve my issue, what is my answer time as viewed by the Commission order. The answer time is 15 seconds; not 8 minutes and 15 seconds and even though I waited on the phone for 8 minutes 15 seconds that company has met the criteria for our Quality of Service Test. On the other hand, if the answer time is 50 seconds and I am immediately transferred to the person who can solve my problem; This company failed the Quality of Service measure as set forth by the Commission. Something is not right about this scenario.

We should place more emphasis on the consumer being connected to the proper service person than how long it takes to receive the call from the consumer.

Michael S. Wilkins
Commissioner Michael S. Wilkins