



will provide a prominent link to this information on its own website.  
(Page 35)

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 answer time standard for the business office and repair service and appropriate uniform reporting procedures for Operator "O" Answer time, Directory Assistance Answer time, Business Office Answer time, and Repair Service Answer time.

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.

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.

On June 4, 2004, the Commission issued its *Order Amending Commission Rule R9-8 Effective July 1, 2004*. In its *June 4, 2004 Order*, the Commission concluded for Negotiated Issue No. 11 (website reporting), as follows<sup>1</sup>:

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

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<sup>1</sup> Commissioner Conder and Commissioner Wilkins dissented from the majority's decision on website reporting in the *June 4, 2004 Order*.

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[n] 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.

Further, the Commission stated in its *June 4, 2004 Order* 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*)." The parties were instructed in the *June 4, 2004 Order* to follow the logic and intent of the *December 27, 2002 Order* concerning website reporting.

On August 3, 2004, the Public Staff, on behalf of itself and the other parties to the docket, filed its Report on Web Posting. The Public Staff noted that it had met twice with representatives from the industry to discuss this issue.

The Public Staff noted that the parties have agreed that the service quality results will be averaged over a 12-month period and updated quarterly. The Public Staff explained in a footnote that after receipt of the results from the fourth quarter of 2004, the results for each measure for each month in 2004 will be added together and divided by 12 (unless a company has applied for or received a waiver). The Public Staff noted that after receipt of the results from the first quarter of 2005, the results would be recalculated by removing the results from the first quarter of 2004 and adding in the results from the first quarter of 2005.

The Public Staff noted that there are two alternative format proposals for website posting: Attachment A of the August 3, 2004 Report (a copy of which is **attached** hereto) which is supported by the Public Staff, BellSouth Telecommunications, Inc. (BellSouth), and Verizon South, Inc. (Verizon), with Carolina Telephone and Telegraph Company, Central Telephone Company, and Sprint Communications Company, L.P. (collectively Sprint) not opposed to the format, and Attachment B of the August 3, 2004 Report (a copy of which is **attached** hereto) which is supported by Time Warner Telecom of North Carolina, L.P. (Time Warner), MCImetro Access Transmission Services, LLC (MCI), AT&T Communications of the Southern States, LLC (AT&T), BTI, and ITC^DeltaCom, Inc. (ITC).

The Public Staff commented that there are two other issues which require a decision by the Commission: (1) whether companies should be allowed to post comments on the website explaining certain service quality results; and (2) whether the service quality results should be posted on the Public Staff's website or the Commission's website.

The Public Staff noted that the parties propose that the Commission allow them to file initial and reply comments on the outstanding issues before the Commission makes a final determination.

On August 12, 2004, the Commission issued its *Order Requesting Comments on August 3, 2004 Report on Web Posting*. The Commission requested the parties to file initial and reply comments on the following specific issues:

(1) Whether the Commission should require (a) the posting of service quality results averaged over a 12-month period and updated quarterly; or (b) the posting of monthly service quality results on a quarterly basis. (See page 32 of the Commission's *December 27, 2002 Order*)

(2) Whether the Commission should adopt the website reporting format outlined in Attachment A or Attachment B of the August 3, 2004 Report on Web Posting.

(3) Whether the Commission should allow companies to post comments on the website explaining certain service quality results.

(4) Whether the Commission should require that service quality results be posted on: (a) each individual company's website; and (b) on the Public Staff's or Commission's website. (See pages 32 and 35 of the Commission's *December 27, 2002 Order*)

(5) Whether the Commission should require companies to post on their own websites the amount of penalties levied against them with citation to the service objective which gave rise to the penalty. Further, whether the Commission or the Public Staff, as appropriate, should make a similar website posting on penalties. (See pages 32 and 35 of the Commission's *December 27, 2002 Order*)

Initial comments were filed on August 30, 2004 by ALLTEL Carolina, Inc. (ALLTEL), jointly by AT&T, MCI, Time Warner, and US LEC of North Carolina, Inc. (US LEC) (the Joint Commenters), the Attorney General, BellSouth, the Public Staff, Sprint, and Verizon. Reply comments were filed on September 9, 2004 by Sprint and on September 13, 2004 by BellSouth and the Public Staff.

Following is a discussion of each of the five unresolved issues related to website reporting including the Commission's conclusions on each issue.

**ISSUE NO. 1:** Whether the Commission should require (a) the posting of service quality results averaged over a 12-month period and updated quarterly; or (b) the posting of monthly service quality results on a quarterly basis. (See page 32 of the Commission's *December 27, 2002 Order*)

## INITIAL COMMENTS

**ALLTEL:** ALLTEL stated that it prefers scenario (a), quarterly reporting of a rolling annual average updated quarterly. ALLTEL maintained that this approach will more accurately reflect service quality objective achievement by reporting companies.

**ATTORNEY GENERAL:** The Attorney General asserted that, as a general matter, consumers probably would benefit by having the results posted both ways – averaged over a 12-month period updated quarterly and on a quarterly basis. The Attorney General argued that the two are not mutually exclusive.

The Attorney General maintained that quarterly results allow consumers to see exactly how the company performed over a particular quarter. The Attorney General noted that if a company had a particularly good or bad quarter from a service standpoint, the consumer will be able to see that.

On the other hand, the Attorney General commented, results averaged over a 12-month period and updated quarterly give the consumer a more long term perspective on how the company has performed regarding the service quality standards. The Attorney General noted that, however, if a company had a particularly good or bad quarter just before the results are posted, the high and low numbers might be smoothed out over the 12 month average and not noticeable to the consumer.

Therefore, the Attorney General stated that his office recommends that the Commission require that the service quality results be posted both ways (averaged over a 12-month period updated quarterly and on a quarterly basis), in two separate charts, with both charts utilizing the reporting format outlined in Attachment A. [**Commission Note:** Attachment A would provide a listing of a company's service quality results all on a single line, such that, under the Attachment A format, multiple companies' results would be listed on a single page. Whereas, under the Attachment B format, each company's service quality results, service area(s), and types of service would be provided on a single page with additional page(s) to follow if the reporting company chose to provide related explanatory comments. The issue of Attachment A versus Attachment B is discussed in Issue No. 2.]

**BELLSOUTH:** BellSouth noted that it supports the posting of results that are averaged over a 12-month period and updated on a quarterly basis. BellSouth asserted that many factors can skew service quality results in a single month and, accordingly, monthly data reported on a quarterly basis may mislead a consumer who has not seen service results "smoothed out" by an averaging over a 12-month period. For example, BellSouth noted, ice storms, severe thunderstorms, and hurricanes can dramatically impact service quality results for a single month. BellSouth maintained that although the rules contain a force majeure provision that will allow companies to ultimately obtain forgiveness for service-affecting events that are outside its control, the company must file unadjusted and adjusted data while waiting for Commission review of its force majeure requests. For example, BellSouth stated, if the results for a particular company

were impacted because of an ice storm in the month of December, that company would have to report its December results by January 20<sup>th</sup>. BellSouth noted that it is not likely that in such a short timeframe the company could receive a ruling on its force majeure request. Therefore, BellSouth asserted, quarterly reports in a monthly format would not be a fair and balanced representation of the company's performance. Moreover, BellSouth argued, since companies operate in different geographic areas, weather events for a single month may skew results for one company but not others. Reporting results over a year eliminates this problem and allows consumers to make applicable and relevant comparisons across companies.

**JOINT COMMENTERS:** The Joint Commenters stated that to the extent the Commission requires website reporting, such reports should be averaged over a 12-month period and updated quarterly, as proposed in the Public Staff's Report on Web Posting.

The Joint Commenters noted that the proposed 12-month averaging is the product of negotiated compromise among industry members and the Public Staff and to the extent that this compromise is not adopted by the Commission the participating carriers do not acquiesce to the resulting regulation.

The Joint Commenters stated that the issue of averaging, in particular, is of great importance to the industry because it relates directly to issues of confidentiality and fair competition that have created controversy concerning the proposed website reporting. The Joint Commenters maintained that they continue to believe that the Commission should not require website reporting, that such reporting will do little to promote public understanding of service quality issues and that requiring the posting of company-specific information could lead to disclosure of competitively sensitive information in contravention of North Carolina laws concerning the protection of what are defined as "trade secrets" under the Trade Secrets Act.

However, the Joint Commenters stated, the negotiated 12-month averaging period serves to diminish the carriers' concerns. The Joint Commenters argued that use of a longer averaging period helps to ensure that company-specific, competitively sensitive information will not be publicly disclosed and that such results will not be used in a potentially anticompetitive fashion by competing carriers. The Joint Commenters stated that the use of a longer averaging period simply will not be as susceptible to misleading and inaccurate comparisons among companies and will not be as likely to disclose information that companies have a compelling interest to protect from public disclosure.

The Joint Commenters maintained that in addition to helping to alleviate the carriers' concern with the release of competitively sensitive information, yearly averaging will more accurately reflect a company's overall service quality performance, which would seem to be the relevant information that the Commission wishes to make available to interested consumers. The Joint Commenters maintained that monthly results obviously can be greatly influenced by temporary events and fluctuations, many of which are beyond the control of a particular provider (e.g., extraordinary weather

events). The Joint Commenters stated that even as to those events which are in the control of the provider, averaging over a longer period of time will help distinguish between carriers that are having systemic difficulty in achieving compliance and those carriers that may only be a percentage point out of compliance in a particular period. The Joint Commenters asserted that averaging of results over a longer period of time has the benefit of rounding out such temporary aberrations and anomalies so that consumers would have a more accurate picture of a company's overall performance.

**PUBLIC STAFF:** The Public Staff maintained that the industry taskforce first proposed the posting of service quality results averaged over a 12-month period in order to smooth out anomalies that might occur. The Public Staff noted that after much discussion, the Public Staff made a decision to accede to this request if the annual results were updated quarterly. The Public Staff asserted that quarterly updating allows consumers to review the most recent results. Therefore, the Public Staff stated that it supports the posting of service quality results averaged over a 12-month period and updated quarterly.

**SPRINT:** Sprint stated that it strongly believes the Commission should post service quality results which represent an averaged rolling 12-month period that are updated quarterly. Sprint argued that merely posting monthly results on a quarterly basis simply does not reflect the long term quality of service provided by a company. Sprint stated that in its considerable experience, it has determined that customers rarely sign up for service with the intent of remaining on the network for only three months. Consequently, Sprint maintained, a quarterly report is far less beneficial to customers than an annual report would be. Furthermore, Sprint argued, yearly results will tend to level out the "peaks and valleys" associated with summer and winter storms and will be far more representative of the overall customer experience provided by the company. Sprint asserted that this is especially important to Carolina as it provides service in a part of the state sometimes ravaged by extremely violent and unpredictable hurricanes. Sprint maintained that if the intent of posting service quality results is to benefit consumers, then clearly a 12-month average provides more complete and useful information.

**VERIZON:** Verizon argued that the Commission should require the posting of service quality results averaged over a 12-month period and updated quarterly. Verizon asserted that the reporting of averaged results gives a clearer picture of a company's performance over a period of time by minimizing the impact of temporary service fluctuations.

## REPLY COMMENTS

**BELLSOUTH:** BellSouth submitted reply comments to Issue No. 1 - Whether the Commission should require (a) posting of service quality results averaged over a 12-month period and update quarterly; or (b) the posting of monthly service quality results on a quarterly basis.

BellSouth stated that it believes that a majority consensus was reached on this issue. BellSouth noted that with the exception of the Attorney General, all other parties, including the Public Staff, supported averaging the data over a 12-month period. BellSouth commented that the Attorney General has suggested using both methods, and like Sprint, BellSouth does not believe that the Attorney General's office has provided sufficient support for the Commission to adopt this approach to reporting. In fact, BellSouth opined, the Attorney General's comments do not indicate that the Attorney General is convinced that it is appropriate to report both ways, as he stated that "consumers probably would benefit by having the results posted both ways." (emphasis added) BellSouth asserted that it is likely that consumers would be overwhelmed and confused by viewing service quality reports both ways for all companies, and it is not clear what useful purpose it would serve. For example, BellSouth noted, if a company fails for one month but passes on the 12-month average, the consumer is likely to have questions regarding past performance. BellSouth argued that with no explanations or past data available, the consumer will be inclined to contact the Public Staff for more detail. BellSouth maintained that reporting a 12-month average is straight forward and easily understood; it is either pass or fail.

BellSouth stated that companies that operate in different geographic areas may have markedly different results for a single month due to a weather related event. BellSouth maintained that averaging over a 12-month period seems the only logical solution to balancing these results.

BellSouth stated that the Commission, therefore, should adopt the position advocated by the majority of the parties and order posting of service quality results averaged over a 12-month period and updated quarterly.

**PUBLIC STAFF:** The Public Staff stated that after carefully studying the initial comments submitted by the other parties in this docket, the Public Staff is not persuaded to alter the positions detailed in its initial comments.

**SPRINT:** Sprint maintained that with the sole exception of the Attorney General's office, the consensus on this issue is that the Commission should post service quality results on an averaged rolling 12-month period, updated quarterly. Sprint noted that the Attorney General's office suggested that the Commission should post results using both methods, yet provided no real support for posting monthly results on a quarterly basis other than to state the obvious that it will allow consumers to see such results. Sprint maintained that it is opposed to posting monthly results on a quarterly basis as doing so simply does not reflect the long-term quality of service provided by a company. Sprint argued that customers rarely sign up for service with the intent of remaining on the network for only three months, and utilizing two separate reporting structures as advocated by the Attorney General's office will confuse customers.



## DISCUSSION

The Commission notes that all parties except the Attorney General support the posting of service quality results averaged over a 12-month period and updated quarterly. The Attorney General maintained that consumers would benefit by having service quality results posted both ways – averaged over a 12-month period updated quarterly and on a quarterly basis. The Commission further notes that the *December 27, 2002 Order* did not contemplate posting service quality results on a 12-month average, updated quarterly; the parties negotiated a 12-month average updated quarterly as outlined in the August 3, 2004 Report on Web Posting.

The Commission understands the desire of the parties to smooth out anomalies but believes that a 12-month average is inappropriate. The Commission believes that a 12-month average is simply too long of a period to average service quality results. The Commission believes that a three-month average (or quarterly average), updated quarterly would be sufficient to smooth out any basic anomalies while still reflecting the most recent service quality results. Further, the Commission notes that the force majeure clause should be utilized by any company which faces a force majeure event which impacts its service quality results.<sup>2</sup>

## CONCLUSIONS

The Commission finds it appropriate to require the posting of service quality results (i.e., in the pass/fail format) averaged over a three-month (quarterly) period and updated quarterly.<sup>3</sup>

**ISSUE NO. 2:** Whether the Commission should adopt the website reporting format outlined in Attachment A (**attached** hereto) or Attachment B (**attached** hereto) of the August 3, 2004 Report on Web Posting.

## INITIAL COMMENTS

**ALLTEL:** ALLTEL stated that it believes that reporting in the form shown in Attachment A is adequate with an average 12-month reporting format. ALLTEL stated that if the Commission chooses to require monthly reporting on a quarterly basis, then the Attachment B format would more accurately reflect company performance and allow for comments to be provided.

**ATTORNEY GENERAL:** The Attorney General stated that he believes that the Commission should adopt the website reporting format outlined in Attachment A, the

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<sup>2</sup> The Commission notes that companies, specifically BellSouth and US LEC, have recently filed force majeure waiver requests with the Commission and that previous waiver requests by Sprint have been granted.

<sup>3</sup> The four quarters of a calendar year would be: First – January, February, and March; Second – April, May, and June; Third – July, August, and September; and Fourth – October, November, and December.

format preferred by the Public Staff. The Attorney General commented that the format outlined in Attachment A allows consumers to more easily compare the service quality reports of different companies because the results for all companies are listed on the same page. By contrast, the Attorney General noted, the format outlined in Attachment B only lists one company per page. The Attorney General asserted that under that format, consumers would have to flip back and forth between many pages in order to compare companies. In addition, the Attorney General stated, the format outlined in Attachment A is simpler and contains only factual information. The Attorney General stated that, by contrast, the format outlined in Attachment B allows companies to post subjective “comments” on the reporting form. The Attorney General stated that he does not believe that it is appropriate to devote space on the reporting form for such comments.

**BELLSOUTH:** BellSouth stated that it supports the proposed format in Attachment A. BellSouth noted, however, that its support for this proposal was made with the understanding that service quality results will be averaged over a 12-month period and updated quarterly. BellSouth maintained that should the Commission rule that monthly results are to be posted on a quarterly basis, then BellSouth would support Attachment A only if it is revised to allow room for comments.

**JOINT COMMENTERS:** The Joint Commenters stated that to the extent the Commission requires website posting of service quality results, it should adopt a reporting format consistent with that set forth in Attachment B to the Public Staff’s Report on Web Posting (the “carriers’ approach”), for the following five reasons.

(1) Use of a measure-specific, side-by-side approach will lead to consumer frustration and confusion.

The Joint Commenters stated that the main difference between the proposed reporting formats is that the Public Staff’s proposed format provides a side-by-side comparison of each company’s performance on a measure-by-measure basis while the carriers’ proposed format provides company-specific service quality information. In other words, the Joint Commenters maintained, the Public Staff’s approach is to attempt to condense all service quality reporting for all North Carolina telephone companies into one report while the carriers’ approach is to have separate reports for each company. The Joint Commenters asserted that while a side-by-side comparison of companies does have surface level appeal, and on its face seems simpler, on closer examination it is clear that the Public Staff’s proposed format will be confusing and frustrating to consumers because telecommunications service is not an undifferentiated, commodity service.

The Joint Commenters argued that the side-by-side comparison of providers’ service quality results gives the appearance of comparing apples to apples (i.e., consumers will assume that Company A’s products and services are comparable to Company Z’s) but this appearance is deceiving. Most importantly, the Joint Commenters asserted, not all providers offer all services. The Joint Commenters noted that it will serve no purpose to inform a consumer about Company Z’s consistently compliant service quality if the

consumer cannot purchase service from that company. For example, the Joint Commenters noted:

- A consumer investigating alternatives for residential telephone service would derive no benefit from learning of the compliant service quality performance of a company providing only business services;
- A consumer desiring standard residential telephone service would derive no benefit from learning of the service quality performance of a company providing only prepaid service; and
- A consumer desiring standard business service in Concord would derive no benefit from learning of the service quality performance of a company providing service only in Raleigh.

The Joint Commenters maintained that the list could go on and on. The Joint Commenters commented that the fundamental point is that service quality information divorced from any information about the type of services provided and the areas where such services are provided is of virtually no use to consumers. The Joint Commenters stated that consumers attempting to obtain service quality information in this manner will only be frustrated as they contact companies that cannot or do not provide the service the consumer is interested in purchasing.

(2) The carriers' approach will provide more information to consumers to assist them in making meaningful choices.

The Joint Commenters asserted that the company-specific approach set forth in Attachment B allows the Commission to contextualize the quality of service information in a manner that will provide more information to consumers as they make decisions in selecting telecommunications providers. Significantly, the Joint Commenters noted, the Public Staff's proposed measure-specific approach does not allow for the presentation to consumers of information relevant to a consumer's ability to make meaningful choices about providers, such as:

- type(s) of service offered by each provider;
- geographic areas served by each provider; and
- provider comments, to contextualize performance levels, especially if and when performance falls below the threshold levels.

By contrast, the Joint Commenters argued, the carriers' approach would allow for the presentation of this data, in addition to potentially other similar information, that will be of critical importance to consumers as they evaluate competitive carriers.

(3) The carriers' approach more accurately reflects the manner in which consumers will likely use the reports.

The Joint Commenters argued that the Public Staff's approach, by virtue of its format, encourages consumers to use a list of undifferentiated providers' service quality results as a "first filter" in selecting service providers while providing no information about whether such carriers are capable of providing the services desired. The Joint Commenters maintained that under the Public Staff's approach, it would be only upon seeking out further information from providers that the consumer would learn the kinds of services offered by a specific carrier and the geographic areas wherein a specific carrier provides service.

The Joint Commenters argued that this process would not seem to reflect the manner in which consumers should be encouraged to – and do in fact – evaluate competitive carriers. In other words, the Joint Commenters maintained, the first step in this process is for consumers to identify carriers that are capable of and willing to provide the services desired by the consumer. The Joint Commenters noted that after such carriers are identified, consumers may, if desired, assess the carriers based on a range of factors, including service quality. The Joint Commenters asserted that access to individual provider reports is consistent with this reality because consumers are likely to be searching the Commission's website for information regarding particular providers prompted by the marketplace – whether through providers' advertising campaigns, other consumers' word of mouth, or other means – rather than attempting to use the Commission's list as the first place to look in selecting a telecommunications provider.

(4) Without an opportunity for carriers to provide comments, the results may be misleading and less informative.

The Joint Commenters stated that because the Public Staff's approach provides no opportunity for providers to contextualize the service quality results by adding comments to the reporting form, consumers will have no way of knowing whether noncompliance during a particular period is the result of a benign and anticipated "hiccup" in the provider's services caused by a beneficial systems upgrade or is the result of some other, more serious cause. In this regard, the Joint Commenters noted, carriers should be allowed to provide relevant information concerning such deviations so that consumers are fully informed in evaluating the service quality results.

The Joint Commenters asserted that the bottom line is that, to the extent that the Commission gets into the consumer information business by requiring the disclosure of service quality results, consumers should be given more, not less, information about service quality, including information deemed relevant by the affected providers. The Joint Commenters stated that this conclusion is consistent with that reached by the New Hampshire Public Utilities Commission in adopting a "Carrier Report Card" similar to the approach set forth in Attachment B. See DT 02-105 Local Exchange Carriers Quality of Service Reporting, *Order Nisi Regarding Quality of Service Reporting, Order No. 24,156 (April 11, 2003)* (available at <http://www.puc.state.nh.us/Regulatory/orders.htm>). The

Joint Commenters noted that in adopting a carrier-specific “report card” allowing for carriers to provide narrative comments on their service quality performance, the New Hampshire Commission found: “The fact that consumers will access carriers one-by-one emphasizes diversity and allows for consideration of all the explanatory information provided. We find that New Hampshire consumers and the competitive marketplace will benefit from the availability of this information.” *Id.* at 7-8. The Joint Commenters stated that as realized by the New Hampshire Commission, consumers will be free to accept or reject any explanations provided, which will in no way undermine basic “compliance/non-compliance” disclosure contained in this report. Moreover, the Joint Commenters noted, in the absence of such an opportunity to explain deviations, carriers will be incented to try to alleviate every deviation, no matter how minor, by seeking a waiver of non-compliance through the Commission petition process. The Joint Commenters noted that this will lead to needless litigation before the Commission and will not serve the goal of providing meaningful information to consumers.

(5) The carriers’ approach will be easier to administer than the Public Staff’s approach.

The Joint Commenters stated that using the carrier-proposed format, each provider would file its report with the Commission, and the Commission or Public Staff would, in turn, upload each provider’s form to the designated website (whether the Commission website or the Public Staff website). The Joint Commenters maintained that this process could be done electronically, with carriers uploading reports directly to the relevant website without the need for Commission intervention. The Joint Commenters noted that consumers would then be able to access each provider’s data individually, and, in the course of reviewing a provider’s compliance with the R9-8 quality standards, the consumers would see whether the provider offers services of the nature and in the location sought.

The Joint Commenters argued that because the carrier-proposed format would only need to be uploaded to the website in its native format, the Commission Staff would not need to compile or reformat any data, and there would be very little risk of error in the posting process. The Joint Commenters maintained that expenditure of resources on the web posting requirement would be minimal for the Commission and the Public Staff, and neither the Commission nor the Public Staff would have any significant additional administrative burdens because they would not be involved in the transfer, compiling, or reformatting of data. Moreover, the Joint Commenters noted, the carriers’ approach would minimize the risk of posting erroneous information, because – unlike the Public Staff’s approach – no transfer, reformatting, or compiling of the reported information would be required. The Joint Commenters asserted that this benefit should not be underestimated, as it is clear that the Public Staff’s approach will require a significant devotion of staff resources to assemble, compile, and update the report.

**PUBLIC STAFF:** The Public Staff stated that it believes that the reporting format proposed in Attachment A is much clearer and more concise than the alternative offered in Attachment B. The Public Staff asserted that the format in Attachment A would allow

consumers to quickly review and compare the “pass/fail” service quality results for all reported measures for all companies by visiting a single web page and scrolling down to the rows containing data on the companies of interest. The Public Staff opined that this format would also readily identify companies that did not file service quality reports and all instances in which companies had indicated that an objective did not apply to them. Finally, the Public Staff noted, although it is not obvious from the hard copy version, the Public Staff has structured this website report so that users can view the Rule R9-8 benchmark for any service quality measure by simply moving a mouse pointer over the heading for the appropriate column.

The Public Staff stated that Attachment B would require posting each company’s service quality results on a separate web page. The Public Staff maintained that this arrangement would be tedious and awkward for visitors to use. The Public Staff stated that it would require them to repeatedly click on individual web links for each company in order to compare information on all companies of interest. The Public Staff argued that this one-company-per-page format would effectively frustrate visitors in their efforts to compare the service quality afforded by multiple providers. The Public Staff asserted that this report format would also require more maintenance on the part of the persons responsible for posting the data and make it significantly more difficult to spot potential errors in company data, making it a source of potential concern for all providers.

The Public Staff recommended that the Commission adopt the reporting format proposed in Attachment A of the Report on Web Posting.

**SPRINT:** Sprint stated that it much prefers and supports the format outlined in Attachment B.

**VERIZON:** Verizon argued that the Commission should adopt the website reporting format as filed by the Public Staff and outlined in Attachment A. In addition, Verizon asserted, the Commission should allow footnote inclusion of comments by companies to explain certain service quality results not meeting objectives, such as when a company files a Force Majeure waiver due to inclement weather.

## **REPLY COMMENTS**

**BELLSOUTH:** BellSouth did not specifically address this issue in its reply comments.

**PUBLIC STAFF:** The Public Staff stated that after carefully studying the initial comments submitted by the other parties in this docket, the Public Staff is not persuaded to alter the positions detailed in its initial comments. However, the Public Staff stated that it wishes to briefly address the Joint Commenters’ views concerning the appropriate format to use for the online service quality report.

The Public Staff stated that it cannot understand why the compact, concise reporting format advocated in Attachment A would be more frustrating and confusing to customers than the format proposed in Attachment B. The Public Staff argued that the

latter would require consumers to follow each company's web page link – literally dozens of them – and scrutinize each company's service quality web page in order to find companies that offered services within the appropriate geographical areas. The Public Staff maintained that service quality results for all companies of interest would need to be retained somehow through this lengthy process and then assembled side-by-side and compared. The Public Staff stated that it believes that a service quality website arranged in this manner would make it impractical for visitors to make meaningful use of any available service quality information.

However, the Public Staff stated that it agrees with the Joint Commenters that providing details on the local telephone services offered by ILECs and CLPs and the specific locations they serve would benefit a consumer searching for a local provider. The Public Staff noted that its Communications Division maintains current contact information on ILECs and CLPs on its website and would be willing to provide a prominent link to each company's website in order to direct visitors to information about the company, its service offerings, and the areas it serves. The Public Staff argued that the format depicted on Attachment A could be readily configured to enable visitors to click on any company name (for example, "Company M") and be routed directly to the corresponding contact information that is posted on the Communications Division's web page. The Public Staff opined that this would facilitate public access to information on companies' geographic availability and offerings while ensuring that the information provided to prospective subscribers is current and relevant. The Public Staff maintained that this contact information would not be linked in any way to the service quality website.

**SPRINT:** Sprint noted that for the reasons set forth by the Joint Commenters, Sprint continues to support Attachment B although it does not oppose Attachment A so long as the Commission utilizes a 12-month reporting period with waiver provisions as outlined by the Public Staff.

## DISCUSSION

The Commission notes that ALLTEL (if a 12-month average is adopted), the Attorney General, BellSouth (if a 12-month average is adopted), the Public Staff, and Verizon support Attachment A while the Joint Commenters and Sprint support Attachment B. Sprint stated in reply comments that it continued to support Attachment B although it does not oppose Attachment A so long as the Commission utilizes a 12-month reporting period (See Issue No. 1) with waiver provisions as outlined by the Public Staff.

The Commission understands the arguments of the Joint Commenters; however, the Commission believes that the arguments of ALLTEL, the Attorney General, BellSouth, the Public Staff, and Verizon supporting Attachment A are more persuasive. The Commission believes that it would be much simpler and cleaner to reflect a report on service quality by listing multiple companies on a single page with additional pages as needed depending on the number of carriers, than to have separate pages on each

individual company. However, the Commission supports the suggestion offered by the Public Staff in its reply comments, whereby it offered to provide a link on the Attachment A format to company-specific information. The Commission believes that this suggestion adequately and appropriately addresses the concerns and issues raised by the Joint Commenters. Therefore, the Commission finds it appropriate to adopt the website posting format as outlined in Attachment A (except reflecting a three-month average – See Issue No. 1), with access to company-specific links as proposed by the Public Staff (i.e., via the Public Staff Communications Division’s webpage).

## **CONCLUSIONS**

The Commission finds it appropriate to adopt the website posting format as outlined in Attachment A (except reflecting a three-month average – See Issue No. 1), with access to company-specific links as proposed by the Public Staff (i.e., via the Public Staff Communications Division’s webpage).

**ISSUE NO. 3:** Whether the Commission should allow companies to post comments on the website explaining certain service quality results.

## **INITIAL COMMENTS**

**ALLTEL:** ALLTEL stated that it prefers a rolling 12-month average reporting of service quality results, updated quarterly. ALLTEL argued that this approach should lessen the need for comments to be provided by a reporting company. ALLTEL stated that if, however, the Commission chose to require monthly reporting, there would be a greater need for companies to have the option of offering an explanation of any deviations from the Commission’s service quality objectives, and such explanations could only be offered through comments.

**ATTORNEY GENERAL:** The Attorney General stated that it would not be appropriate to devote space on the reporting form, whereby, companies would post subjective comments regarding their service quality results. The Attorney General maintained that the Commission should not give companies the opportunity, on a government website, to explain away their failure to meet service quality objectives, to criticize the service quality standards, to market their services, to criticize another company, or to make whatever other use the companies might make of a “comment” space on the reporting form.

The Attorney General stated that the service quality results are what they are; the company would either meet the Commission’s service quality standards for the relevant period or it would not. The Attorney General maintained that if, under the Commission’s rules, the company had a valid excuse for not meeting the standard, such as severe weather, the company can apply for an appropriate waiver; all such waiver applications would be shown in the reporting format outlined in Attachment A. The Attorney General stated that if a company had a valid reason for not meeting the standard, that would be reflected in the format preferred by the Public Staff and the Attorney General.



The Attorney General stated that previously, most of the companies filed comments in this docket objecting, on trade secret grounds, to the original proposed website reporting plan whereby the companies' specific service quality results for each standard (i.e., specific numbers) would be posted. The Attorney General noted that in order to accommodate such concerns, the Attorney General and the Public Staff proposed a pass/fail system where the companies would not have to post specific data. The Attorney General maintained that having gone with that format, it would not be appropriate for the Commission to now give companies the opportunity to, among other things, provide specific service quality data in the "comment" section and/or to state that they came close to meeting the standard but just barely missed it. The Attorney General noted that the companies cannot have it both ways by discussing specific data only when it fits their needs. The Attorney General stated that while the companies are free to say whatever they want about the service quality standards/results on their own websites or through other methods, the Commission should not have to carve out space on the Commission's website reporting form for such comments. Instead, the Attorney General argued, the Commission should require that the results be posted in a clean, simple, factual manner, incorporating the format outlined in Attachment A.

**BELLSOUTH:** BellSouth noted that if the Commission ultimately rules that monthly results should be reported on a quarterly basis, BellSouth strongly submits that companies be allowed to post comments on the website to explain anomalies in service results for a particular month.

**JOINT COMMENTERS:** The Joint Commenters stated that they believe that the Commission should allow companies to post comments concerning service quality results. The Joint Commenters referenced their comments on Issue No. 2.

**PUBLIC STAFF:** The Public Staff stated that it believes that it would be extremely unwise for the Commission to allow providers to post comments or explanations concerning their service quality data on the website where the service quality results are posted for public inspection.

The Public Staff maintained that the Commission has extended considerable time and effort in this docket to establish rules that treat local telephone providers identically with respect to the service quality requirements they are expected to meet and the provision of meaningful service quality information to the Commission. The Public Staff noted that the Commission is currently attempting to develop effective website posting standards, and in doing so it should make every effort to continue to provide a level service quality playing field among the companies. The Public Staff asserted that allowing companies to post comments explaining their service quality data would be extremely unwise and could substantially degrade consumers' perceived usefulness of these data. The Public Staff opined that the service quality data being reported by the companies should require no explanation; the data speak for themselves. The Public Staff argued that introducing company comments into the service quality reports would add subjectivity to what should be an objective process.

However, the Public Staff maintained, the Commission should allow one exception to the prohibition on company comments within the online reports. The Public Staff proposed that if a company has filed a request for a force majeure waiver under the provisions of Rule R9-8(c), the monthly service quality data for the objective and period for which the waiver had been requested should be expunged from the data that are used to calculate the posted service quality results. The Public Staff noted that the resulting figures should then be footnoted with the text recommended by the Public Staff in Attachment A of the Report on Web Posting, i.e., "The company has requested waiver of Commission objectives due to inclement weather. The data shown represent an average of unaffected months." The Public Staff stated that if a waiver were subsequently granted, the footnote would be updated to reflect the approval. In the event a waiver is not granted, the expunged data would be added back into the calculation and the results would be recalculated and reposted; and, at such time, the Public Staff maintained that the waiver footnote would also be dropped.

**SPRINT:** Sprint stated that it strongly believes that companies should be given an opportunity to comment on results to ensure they are put in the proper context. Sprint asserted that in order to give consumers who are truly interested in this information an accurate picture, an explanation of the data should be made available. For example, Sprint noted, sometimes events which are outside the control of the companies can impact the quality of service. Sprint opined that a brief explanation of such an occurrence would likely be helpful to any interested party. Sprint noted that this would in no way alleviate a company's obligation to state whether or not they are in compliance. Accordingly, Sprint asserted, companies should be given the opportunity to comment; doing so will ultimately prove beneficial to customers.

**VERIZON:** Verizon argued that the Commission should allow companies to post comments on the website explaining certain service quality results. Verizon opined that this will give consumers a more complete and accurate picture of the circumstances underlying a company's performance. For example, Verizon stated, if a company missed a service quality standard due to forces beyond its control, such as a hurricane or other *force majeure*, the company should be allowed to explain that it was not responsible for the missed service quality standard. Otherwise, Verizon maintained, consumers may draw erroneous conclusions and develop an incomplete or inaccurate view of a company's performance.

## REPLY COMMENTS

**BELLSOUTH:** BellSouth did not specifically address this issue in its reply comments.

**PUBLIC STAFF:** After carefully studying the initial comments submitted by the other parties in this docket, the Public Staff stated that it is not persuaded to alter the positions detailed in its initial comments.

**SPRINT:** Sprint stated that it continues to believe that companies should be given an opportunity to comment on results to ensure they are put in proper context. Sprint

noted that while the positions of ALLTEL and BellSouth that a 12-month averaged period lessens the need for comments does have some validity, there remains the possibility that unusual circumstances and deviations still warrant comments. For example, Sprint stated, in those companies with national call centers that are located outside North Carolina, weather conditions that have no physical impact on the citizens of North Carolina might prevent call center employees from making it to their work locations and thus impact answer time results. Sprint argued that such a scenario is highly possible and can likely be explained only through comments.

Sprint noted that the Attorney General's office also stated, "The Commission should not give companies the opportunity, on a government website, to explain their failure to meet service quality objectives, to criticize the service quality standards, to market their services, to criticize another company, or make whatever other use the companies might make of the 'comment' space on the reporting form." Sprint asserted that these are mere assumptions with no stated basis whatsoever. Sprint stated that it believes that space for comments should be limited and would therefore be inadequate for the types of material the Attorney General's office assumes could take place. Furthermore, Sprint stated that it has no doubt that were a comment section abused in the manner suggested by the Attorney General's office, the Commission could quickly correct the situation.

## **DISCUSSION**

The Commission notes that the Joint Commenters, Sprint, and Verizon support allowing companies to post comments on the website explaining certain service quality results; the Attorney General and the Public Staff do not support allowing companies to post comments on the website; and ALLTEL and BellSouth stated that if the Commission allows a 12-month rolling average, updated quarterly (See Issue No. 1), then the need for comments should be lessened.

The Commission agrees with the Public Staff and the Attorney General that it is inappropriate to allow companies to post comments on the service quality results. The standards in Rule R9-8 were instituted after a detailed, painstaking proceeding to establish fair and reasonable service standards, and the standards are what they are. The Commission notes that with Attachment A (See Issue No. 2), if a company files a force majeure waiver with the Commission, the waiver request will be noted and until the waiver request is ruled on, the results will be excluded from the website posting. The Commission notes that two companies have recently filed waiver requests with the Commission. The Commission believes that this notation provision in Attachment A for a force majeure waiver request is adequate to address any of the concerns raised by the Joint Commenters, Sprint, and Verizon. Therefore, the Commission finds it inappropriate to allow companies to post comments on the website explaining certain service quality results with the exception of the notation provision in Attachment A for a force majeure waiver request.

## CONCLUSIONS

The Commission finds it inappropriate to allow companies to post comments on the website explaining certain service quality results with the exception of the notation provision in Attachment A for a force majeure waiver request.

**ISSUE NO. 4:** Whether the Commission should require that service quality results be posted on: (a) each individual company's website; **and** (b) on the Public Staff's **or** Commission's website. (See pages 32 and 35 of the Commission's *December 27, 2002 Order*)

## INITIAL COMMENTS

**ALLTEL:** ALLTEL stated that it believes that the most likely site for consumers to visit in seeking this type information is the Commission's website, not the company's website and not the Public Staff's website. As a result, ALLTEL stated it believes that the Commission, being a state-specific source of information, is where this information should be posted, if there is going to be a website posting. ALLTEL asserted that companies should not be required to post this information on their websites. ALLTEL maintained that it is likely that end-users will go to the Commission's website to look for service quality – they are less likely to go to the Public Staff's website or a company website.

**ATTORNEY GENERAL:** The Attorney General opined that the results should be posted on the Commission's website. The Attorney General asserted that consumers are more likely to visit the Commission's website than the Public Staff's website. The Attorney General stated that its office understands that the Public Staff is willing to do all the necessary data input, etc., in order for the results to be posted on the Commission's website.

The Attorney General stated that its office does not believe that it is necessary to require the companies to post the service quality results on each individual company's website.

**BELLSOUTH:** BellSouth argued that since the companies file service results with the Public Staff, BellSouth submits that it should be the Public Staff's responsibility to post and maintain the data on the Public Staff website. BellSouth asserted that the Commission can always post a link on its own website to allow consumers who visit the Commission website to easily find the service quality results on the Public Staff's website. BellSouth maintained that there is simply no practical need for the Commission to maintain this information on its website as well.

Further, BellSouth stated that it strongly objects to any Commission order requiring posting of service quality results on its own website. BellSouth opined that a Commission rule requiring the posting of either service quality results or penalty information on BellSouth's website would violate BellSouth's free speech rights.

BellSouth noted that in Verizon's February 5, 2003 motion for reconsideration filed in this docket, Verizon provided the constitutional grounds underlying its objection to any rule requiring Verizon to publish information on its website over its objections. BellSouth stated that rather than repeat that analysis, BellSouth incorporates that portion of Verizon's February 5, 2003 pleading by reference in its initial comments. Moreover, BellSouth commented, if the Commission requires service quality results to be posted on either the Public Staff's website or the Commission's own site, there is no need for the Commission to compel BellSouth to place this same information on its own website. BellSouth asserted that the Commission, therefore, would have achieved a "non-speech" related means of meeting its consumer-information objective without infringing on BellSouth's First Amendment rights.

**JOINT COMMENTERS:** The Joint Commenters noted that to the extent the Commission adopts a website reporting requirement, such a requirement could only apply to the Commission's and/or Public Staff's websites. The Joint Commenters asserted that the Commission does not have jurisdiction over individual company websites and to assert such jurisdiction opens a Pandora's box of issues regarding the extent of the Commission's authority. The Joint Commenters maintained that certainly nothing in the Commission's authorizing statutes explicitly grants the Commission authority over websites, and the Commission, to this date, has not asserted such jurisdiction. The Joint Commenters stated that nothing would prohibit a company from voluntarily posting service quality results on their own website, but the Commission does not have jurisdiction to require such posting. Moreover, the Joint Commenters argued, even if the jurisdictional issues can be surmounted, a requirement that providers post content of the Commission's choosing on their internal company websites would raise significant First Amendment issues, as has been previously demonstrated in this proceeding.

The Joint Commenters commented that for these reasons, if the Commission determines that website reporting of service quality reports is appropriate and necessary, it should confine any such reports to its own, or the Public Staff's, website.

**PUBLIC STAFF:** The Public Staff argued that while the Commission may be able to require each company to post its service quality results on its own company website, it should carefully consider the fact that there may be considerable obstacles to implementing such a requirement. First of all, the Public Staff noted, every local telephone provider may not have its own website, and there is presently no requirement that a provider operate online. Moreover, the Public Staff opined, this approach would necessitate the adoption of comprehensive regulations to address at least the following areas:

- the information that would be required to be posted and any posting deadlines;
- the location or locations where the results would be posted on company websites so as to be easily accessible;

- formatting requirements such as text font, size, and color so as to be clearly visible; and
- presentation of the information in a practical, readable format.

The Public Staff maintained that monitoring compliance with these requirements would be a burdensome task for the Public Staff and potentially for the Commission. Finally, the Public Staff asserted, companies would likely claim a First Amendment right to include comments on their websites explaining the service quality results. The Public Staff stated that this would introduce subjectivity into the reporting and degrade the perceived usefulness of the data to consumers.

The Public Staff maintained that these considerations lead it to recommend that the Commission refrain from requiring companies to post their service quality results on their own websites.

The Public Staff noted that with regard to the issue of service quality postings at the Commission's or Public Staff's website, the Public Staff's web pages have never been used for the purpose of communicating information to the public concerning Commission docket activity. The Public Staff maintained that its website indicates that it has not been revised since May 13, 2003. The Public Staff asserted that its website contains little information. The Public Staff opined that the Commission's website, on the other hand, is continually updated and contains a wealth of public information. Thus, the Public Staff asserted, consumers are much more likely to visit the Commission's website than that of the Public Staff.

The Public Staff stated that it also believes that the service quality results should not be posted on the Public Staff Communication Division's web page. The Public Staff maintained that the primary functions of this page are the dissemination of contact information on certified ILECs, CLPs, long distance carriers, and payphone service providers; provision of public information on the status of interconnection agreements; and provision of useful internet links to the public.

For those reasons, the Public Staff stated that it proposes that any service quality reports that are populated with data gleaned from company service quality filings which are made in Docket No. P-100, Sub 99A and produced in accordance with Commission Rule R9-8 should be posted on the Commission's website.

However, the Public Staff noted that it recognizes that it has traditionally taken a major role in obtaining and evaluating telephone service quality data, and that it would be unreasonable to expect the Commission Staff to bear the responsibilities of gathering and verifying service quality data, converting them into a useful format, and posting results on its website. The Public Staff proposed the following arrangement as an alternative: that the Commission post public service quality reports on its website, and that the Public Staff facilitate the postings by accepting and cataloguing each company's service quality information, verifying its completeness and accuracy as

needed, using the data to generate a report in a format suitable for posting, and finally, transmitting this report to the Commission Staff. The Public Staff stated that it believes that these arrangements will ensure that the postings are handled as efficiently as possible.

**SPRINT:** Sprint asserted that the Commission's decision on Issue No. 4 should be largely based upon the decision it reaches regarding the appropriate reporting format, i.e. Attachment A or Attachment B (Issue No. 2). Sprint commented that publication on an individual company's website will only be reasonable when using the single company format found on Attachment B. Sprint argued that the Commission definitely should not require a company to publish the consolidated format (Attachment A) as it contains the service results of multiple companies. Sprint asserted that requiring a company to post the results of a competitor on its own website is not acceptable nor is it warranted under any circumstances of which Sprint is aware. Sprint noted that the Commission is and should continue to be perceived by the public as an impartial body that does not favor, recommend, or endorse one service provider over another. Sprint argued that for this reason alone, it would not be appropriate for the Commission to publish service results on its official website. Sprint maintained that the Public Staff, however, is charged with being the public's advocate and could publish information such as that found in Attachment A on its website. Consequently, Sprint opined, if the Commission rules that Attachment A is the most appropriate format, publication on the Public Staff's website is the only reasonable alternative. Sprint asserted that if the Commission rules that Attachment B is the most appropriate format, publication by either the individual company or the Public Staff is reasonable.

**VERIZON:** Verizon stated that it continues to oppose website posting of service quality results. However, Verizon noted, given that the Commission has mandated website posting, the Commission's website is the most appropriate place to post the results. Verizon commented that in states where Verizon is required to post results, the Commission's website is used. Verizon opined that from a customer standpoint, it may be easier to locate service results on the Commission's website, because company websites vary considerably and are not state-specific. Moreover, Verizon noted, results should be posted on only the Commission's website because posting the results on multiple websites would be redundant and unduly burdensome.

## **REPLY COMMENTS**

**BELLSOUTH:** BellSouth did not specifically address this issue in its reply comments.

**PUBLIC STAFF:** After carefully studying the initial comments submitted by the other parties in this docket, the Public Staff stated that it was not persuaded to alter the positions detailed in its initial comments.

**SPRINT:** Sprint stated that on this issue, the consensus of all commenting parties is that the Commission should not require companies to post service quality results on individual company websites. Sprint maintained that there does however continue to be

disagreement as to whether the results should be posted on the Public Staff's of Commission's website. Sprint stated that it believes the Commission is, and should continue to be perceived by the public to be, an impartial body that does not favor, recommend, or endorse one service provider over another. Sprint opined that for this reason alone, it is not appropriate for the Commission to publish service results on its official website. Sprint argued that the Public Staff represents the using and consuming public and thus would be the most appropriate publisher of such information.

Sprint maintained that the Public Staff and the Attorney General's office appear to be the highest advocates of maintaining the results on the Commission's website. Sprint stated that, specifically, the Public Staff incorrectly reasons that the results should not be posted on its own website as it has not been updated since May 13, 2003 when in fact the Public Staff's website contains documents that are updated almost weekly. Sprint noted that the Public Staff is willing to do the work to update the Commission's website, so updating its own website should be no more cumbersome. Sprint maintained that the Attorney General's office states that the results should be posted on the Commission's website for the mere reason that consumers are more likely to visit the Commission's website than the Public Staff's website. Sprint opined that while this may or may not be true as no factual evidence has been introduced to confirm this, the Public Staff is the representative of the using and consuming public. As such, Sprint noted, the Public Staff's website is the most appropriate.

## DISCUSSION

The Commission notes that BellSouth and Sprint support posting of service quality results on the Public Staff's website; ALLTEL, the Attorney General, the Public Staff, and Verizon support posting of results on the Commission's website; and the Joint Commenters support posting of results on the Commission's and/or the Public Staff's website. No party supported posting of results on individual company websites.

The Commission further notes that the Commission specifically stated in its *December 27, 2002 Order* that it “. . . sees no necessary or convincing legal impediment to requiring companies to post on their own websites whether or not they have been assessed penalties for quality of service violations, the nature of such violations, and the amount assessed in addition to the pass/fail information” (Page 35 with emphasis in original). However, the Commission notes, the parties were asked to negotiate the specific details of a website reporting procedure, and the parties unanimously agreed that it is not appropriate to require companies to post service quality results on their own websites.

The Commission believes that, since Rule R9-8 is, in fact, a Commission rule, it is appropriate to post service quality results on the Commission's website. The Commission does not believe, as Sprint suggested, that posting service quality results on the Commission's website would lead the public to believe the Commission favors, recommends, or endorses one service provider over another. Commission Rule R9-8 sets service quality standards, and simply listing each company and whether that



company passed or failed each particular standard in no way indicates that the Commission favors, recommends, or endorses one service provider over another.

The Commission further finds appropriate the Public Staff's suggestion that the Public Staff facilitate the postings by accepting and cataloguing each company's service quality information, verifying its completeness and accuracy as needed, using the data to generate a report in a format suitable for posting, and finally, transmitting this report to the Commission Staff.

## CONCLUSIONS

The Commission finds it appropriate to require that service quality results be posted on the Commission's website only (and not the Public Staff's or each individual company's websites) and to request the Public Staff to facilitate the postings by accepting and cataloguing each company's service quality information, verifying its completeness and accuracy as needed, using the data to generate a report in a format suitable for posting, and finally, transmitting this report to the Commission Staff.

**ISSUE NO. 5:** Whether the Commission should require companies to post on their own websites the amount of penalties levied against them with citation to the service objective which gave rise to the penalty. Further, whether the Commission or the Public Staff, as appropriate, should make a similar website posting on penalties. (See pages 32 and 35 of the Commission's *December 27, 2002 Order*)

## INITIAL COMMENTS

**ALLTEL:** ALLTEL stated that it believes that as to the first question posed in this issue, the Commission should not require companies to post information on their own websites as to the amount of any penalties that may have been levied against them. ALLTEL argued that any penalties assessed would have been levied by the Commission and, if they are to be posted anywhere, it should be on the Commission's website.

As to the second aspect of this issue, ALLTEL stated that it believes it would not be appropriate for the Commission to post information as to penalty assessments on its website. ALLTEL maintained that any reference to penalty assessments may actually be misleading to consumers, who are not likely to understand the basis for the penalty or the fact that different LECs are subject to different price regulation plans with different penalty regimes. ALLTEL noted that as the Commission knows, different LECs are subject to different price regulation plans, and some LECs are still subject to rate of return regulation. ALLTEL stated that the price regulation plans that are in effect are not uniform as to inclusion of a penalty provision and not all penalty provisions are identical. As a result, ALLTEL opined, penalty assessment information could be misleading.

In addition, ALLTEL noted, consumers can study the information reported in Attachment A and determine if a company has or has not met the Commission's service quality objectives. ALLTEL maintained that this information is sufficient for the particular

forum involved here, where companies will, at best, have a limited opportunity to provide comments regarding any past penalty assessments. ALLTEL noted that while its price regulation plan does not include a penalty provision, it would seem that publication of this piece of information would be inappropriate, given the lack of uniform penalty regimes which leaves some providers subject to penalty assessments while others are not.

**ATTORNEY GENERAL:** The Attorney General maintained that while the Commission is obviously free to publicize penalties in any manner it sees fit, the Attorney General does not believe it is necessary to devote space for penalties on the website reporting format outlined in Attachment A. The Attorney General stated that for one thing, under the pertinent Commission rules and price plans, some companies are subject to such penalties and others, such as CLPs, are not. Therefore, the Attorney General asserted, providing space on the form for such penalties may not provide for a fair, or easily understood, comparison.

The Attorney General stated that its office does not believe that it is necessary to require the companies to post the amount of penalties levied against them on their own individual websites.

**BELLSOUTH:** BellSouth stated that it objects to any posting on any website of penalties incurred as a result of service quality misses. BellSouth noted that it incorporates by reference its argument that requiring said posting would violate its free speech rights. Additionally, BellSouth maintained, as the Commission is well aware, only BellSouth and Sprint are required, as part of their current price regulation plans, to pay penalties for service quality misses. Therefore, BellSouth argued, it would be extremely misleading, discriminatory, and inequitable for consumers to visit the Public Staff/Commission website, view penalty information posted by BellSouth or Sprint, and conclude that somehow those companies' service is more deficient than others because those were the only companies that had incurred penalties. BellSouth asserted that the Commission can avoid this discriminatory situation altogether by not requiring any posting of penalties. Moreover, BellSouth opined, its customers will learn of penalties for service quality misses because the Plan requires the monies to be returned to customers in the form of bill credits. Thus, BellSouth opined, it is not as if BellSouth's performance under its own penalty plan will go undetected by its customers. Therefore, BellSouth argued, the Commission should not require any posting of penalties associated with service quality misses on any website.

**JOINT COMMENTERS:** The Joint Commenters asserted that the Commission has no jurisdiction to require posting of penalties on individual company websites. The Joint Commenters noted that as to publication on the Commission's or the Public Staff's website, Commission decisions and company filings are already posted on the Commission website, so there does not appear to be a need to require any additional posting or disclosure.

**PUBLIC STAFF:** The Public Staff asserted that self-enforcing penalties for recurrent service quality failures are required for only four telephone companies in North Carolina: BellSouth, Carolina, Central, and North State Telephone Company. The Public Staff maintained that these providers voluntarily agreed to incorporate provisions for self-enforcing penalty provisions into their price plans. The Public Staff noted that the penalty provisions that were adopted in each company's price plan have continued to operate without change since their initial approval.

The Public Staff stated that it is concerned that posting details on the self-enforcing penalties paid by these four companies along with service quality data obtained pursuant to Rule R9-8 might give the impression that the service provided by these companies is inferior to that provided by other price plan ILECs, rate-of-return ILECs, and CLPs; this would be misleading to consumers. The Public Staff asserted that it would also effectively punish the four providers that have voluntarily accepted self-enforcing penalty provisions in their price plans, and benefit companies that either are not subject to these same provisions or have refused to incorporate them into their price plans.

The Public Staff maintained that there are wide variations among companies as to size and number of access lines. The Public Staff noted that although the penalties are scaled to the size of the company, a consumer would be unlikely to know the differences between companies and could give inappropriate weight to a penalty in selecting a local telephone provider. Therefore, the Public Staff stated that it does not believe that the Commission should require the posting of penalties on either a company's or the Commission's or the Public Staff's website.

**SPRINT:** Sprint noted that the penalties in question are those arising from self-executing plans voluntarily entered into by various companies. Sprint stated that it is strongly opposed to the posting of such penalties. Sprint asserted that publication would be inherently unfair to Carolina and Central because competing companies may not be subject to self-executing plans. Sprint maintained that although it may be argued that those companies which entered into such plans did so voluntarily, the posting of penalties was not a condition contemplated at the time the companies agreed to the self-executing penalty plans. Sprint argued that to create such a requirement at this time would be unjust and without proper regard to the voluntary entry. Furthermore, Sprint noted, not all companies are subject to self-executing penalty plans. Sprint opined that to require a company who is subject to a penalty plan to post any penalty it may have incurred alongside a company which is not subject to a penalty plan, yet whose service may be far inferior, clearly sends the wrong message to consumers. Sprint maintained that when examining the pass/fail report a consumer might incorrectly assume that a company which paid a penalty might have provided service that was inferior to those companies that still missed the objective, but were not subject to a penalty. Sprint stated that such a scenario is highly plausible, sends the wrong message to consumers, and is grossly unfair to the impacted company and ultimately to consumers of telecommunications services.

**VERIZON:** Verizon argued that companies should not be required to post the penalties levied against them, because such postings could mislead consumers. Verizon asserted that is because not all companies are subject to penalties, and, even among those companies that are subject to penalties, the penalties are not uniform among all companies.

## REPLY COMMENTS

**BELLSOUTH:** BellSouth did not specifically address this issue in its reply comments.

**PUBLIC STAFF:** After carefully studying the initial comments submitted by the other parties in this docket, the Public Staff stated that it was not persuaded to alter the positions detailed in its initial comments.

**SPRINT:** Sprint noted that, on this issue, the consensus of all commenting parties is that the Commission should not require companies to post the amount of penalties levied against them on any website.

## DISCUSSION

The Commission notes that no party supported a requirement that companies post on their own websites (or on the Commission's or Public Staff's websites) the amount of penalties levied against them with citation to the service objective which gave rise to the penalty.

The Commission further notes that the Commission stated in its *December 27, 2002 Order* that “. . . it can require ILECs and CLPs to post on their websites a pass/fail statement regarding each of the Rule R9-8 requirements, together with the amount of penalties levied against them or credits or refunds required of them with citation to that part of Rule R9-8 which gave rise to the penalty, credit, or refund. The Public Staff is requested to make a similar website posting. The Commission will provide a prominent link to this information on its own website.” (Page 32) The Commission further concluded that it “. . . sees no necessary or convincing legal impediment to requiring companies to post on their own websites whether or not they have been assessed penalties for quality of service violations, the nature of such violations, and the amount assessed in addition to the pass/fail information” (Page 35 with emphasis in original) Finally, the Commission stated “[i]t would, however, be useful for the Public Staff to provide independent posting of both the pass/fail and the penalties information on its website so that all this information can be gathered in one place. The Commission will provide a prominent link to this information on its own website.” (Page 35). Therefore, in the *December 27, 2002 Order*, the Commission intended for penalty information to be posted on the companies' websites as well as the Public Staff's website. The parties were asked in the *June 4, 2004 Order* to negotiate the specific details of website posting, and the parties unanimously agreed that posting of penalty information is not appropriate.

Based upon the parties' comments in this regard, the Commission agrees with the parties that it is inappropriate to require the posting of the amount of penalties levied against a company on either the company's own website or on the Public Staff's or the Commission's websites. The Commission specifically agrees with the Public Staff that since only four ILECs are subject to self-enforcing penalties under their price regulation plans, it would be misleading to consumers to post penalty information. The Commission further agrees that such posting could be considered effectively punishing the four companies that have voluntarily accepted self-enforcing penalty provisions in their price plans.

Further, the Commission agrees with BellSouth's assertion that customers will learn of penalties for service quality misses because the price regulation plans require the monies to be returned to customers in the form of bill credits.

Therefore, the Commission concludes that companies should not be required to post on their own websites (or on the Public Staff's or Commission's websites) the amount of penalties levied against them with citation to the service objective which gave rise to the penalty.

## **CONCLUSIONS**

The Commission concludes that companies are not required to post on their own websites (or on the Public Staff's or Commission's websites) the amount of penalties levied against them with citation to the service objective which gave rise to the penalty.

## **OVERALL COMMISSION CONCLUSIONS**

Overall, the Commission concludes that it is appropriate to:

(1) Require the posting of service quality results (i.e., in the pass/fail format) averaged over a three-month (quarterly) period and updated quarterly.

(2) Adopt the website posting format as outlined in Attachment A (except reflecting a three-month average – See Issue No. 1), with access to company-specific links as proposed by the Public Staff (i.e., via the Public Staff Communications Division's webpage).

(3) Not allow companies to post comments on the website explaining certain service quality results with the exception of the notation provision in Attachment A for a force majeure waiver request.

(4) Require that service quality results be posted on the Commission's website only (and not the Public Staff's or each individual company's websites) and request the Public Staff to facilitate the postings by accepting and cataloguing each company's service quality information, verifying its completeness and accuracy as needed, using

the data to generate a report in a format suitable for posting, and finally, transmitting this report to the Commission Staff.

(5) Conclude that companies should not be required to post on their own websites (or on the Public Staff's or Commission's websites) the amount of penalties levied against them with citation to the service objective which gave rise to the penalty.

The Commission further concludes that website posting of service quality results will begin as soon as possible after the service quality reports reflecting results for January, February, and March 2005 are filed with the Commission. Therefore, the first posting on the Commission's website will include a three-month average of the results for January, February, and March 2005.

IT IS, THEREFORE, ORDERED as follows:

1. That website posting of service quality results will begin as soon as possible after the service quality reports reflecting results for January, February, and March 2005 are filed with the Commission.

2. That the posted service quality results (i.e., in the pass/fail format) will reflect a three-month (quarterly) average and will be updated quarterly.

3. That the website posting format as outlined in Attachment A (except reflecting a three-month average), with access to company-specific links as proposed by the Public Staff (i.e., via the Public Staff Communications Division's webpage), is hereby adopted.

4. That companies will not be allowed to post comments on the website explaining certain service quality results with the exception of the notation provision in Attachment A for a force majeure waiver request.

5. That service quality results will be posted on the Commission's website only (and not the Public Staff's or each individual company's websites) and that the Public Staff is requested to facilitate the postings by accepting and cataloguing each company's service quality information, verifying its completeness and accuracy as needed, using the data to generate a report in a format suitable for posting, and finally, transmitting this report to the Commission Staff.

6. That companies will not be required to post on their own websites (or on the Public Staff's or Commission's websites) the amount of penalties levied against them with citation to the service objective which gave rise to the penalty.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of November, 2004

NORTH CAROLINA UTILITIES COMMISSION

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

Patricia Swenson, Deputy Clerk

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