Robert A. Culpepper
General Attorney

Legal Department

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0841

May 12, 2004

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. ___________
Petition of BellSouth Telecommunications, Inc. for the Opening Of a Docket to Establish a New Performance Assessment Plan

Dear Ms. Bayó:

Enclosed is Petition of BellSouth Telecommunications, Inc. For The Establishment of a New Performance Assessment Plan. We ask that you open a docket to consider this Petition.

Courtesy copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Robert A. Culpepper

Enclosures

cc: Attached service list
Marshall M. Criser, III
Nancy B. White
R. Douglas Lackey

PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR THE OPENING OF A DOCKET TO ESTABLISH A NEW PERFORMANCE ASSESSMENT PLAN

CERTIFICATE OF SERVICE
Docket No. __________

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U. S. Mail this 12th day of May, 2004 to the following:

Jason K. Fudge
Tim Vaccaro
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6181
Fax. No. (850) 413-6250
jfudge@psc.state.fl.us

AT&T
Virginia C. Tate
Senior Attorney
1200 Peachtree Street
Suite 8100
Atlanta, GA 30309
Tel. No. (404) 810-4922
vtate@att.com

Verizon, Inc.
Kimberly Caswell
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110
Tel. No. (813) 483-2617
Fax. No. (813) 223-4888
kimberly.caswell@verizon.com

Nanette Edwards (+)
Regulatory Attorney
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, Alabama 35802
Tel. No. (256) 382-3856
Fax. No. (256) 382-3936
nedwards@itcdeltacom.com

Peter M. Dunbar, Esquire
Karen M. Camechis, Esquire
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
Post Office Box 10095 (32302)
215 South Monroe Street, 2nd Floor
Tallahassee, FL 32301
Tel. No. (850) 222-3533
Fax. No. (850) 222-2126
pete@penningtonlawfirm.com

Brian Chaiken
Supra Telecommunications and Information Systems, Inc.
2620 S. W. 27th Avenue
Miami, FL 33133
Tel. No. (305) 476-4248
Fax. No. (305) 443-1078
bchaiken@stis.com

Michael A. Gross
Vice President, Regulatory Affairs & Regulatory Counsel
Florida Cable Telecomm. Assoc.
246 East 6th Avenue
Tallahassee, FL 32303
Tel. No. (850) 681-1990
Fax. No. (850) 681-9676
mgross@fcta.com

Susan Masterton
Charles J. Rehwinkel
Sprint
Post Office Box 2214
MS: FLTLHO0107
Tallahassee, Florida 32316-2214
Tel. No. (850) 599-1560

Fax. No. (850) 878-0777
susan.masterton@mail.sprint.com

Donna Canzano McNulty (+)
MCI WorldCom, Inc.
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301
Tel. No. (850) 422-1254
Fax. No. (850) 422-2586
donna.mcnulty@wcom.com

Brian Sulmonetti
MCI WorldCom, Inc.
6 Concourse Parkway, Suite 3200
Atlanta, GA 30328
Tel. No. (770) 284-5493
Fax. No. (770) 284-5488
brian.sulmonetti@wcom.com

William Weber, Senior Counsel
Covad Communications
1230 Peachtree Street, N.E.
19th Floor, Promenade II
Atlanta, Georgia 30309
Tel. No. (404) 942-3494
Fax. No. (508) 300-7749
wweber@covad.com

John Rubino
George S. Ford
Z-Tel Communications, Inc.
601 South Harbour Island Blvd.
Tampa, Florida 33602
Tel. No. (813) 233-4630
Fax. No. (813) 233-4620
gford@z-tel.com

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman, et. al
117 South Gadsden Street
Tallahassee, Florida 32301
Tel. No. (850) 222-2525
Fax. No. (850) 222-5606
jmcglothlin@mac-law.com
vkaufman@mac-law.com
Represents KMC Telecom
Represents Covad
Represents Mpower

Jonathan E. Canis
Michael B. Hazzard
Kelley Drye & Warren, LLP
1200 19th Street, N.W., Fifth Floor
Washington, DC 20036
Tel. No. (202) 955-9600
Fax. No. (202) 955-9792
jacanis@kelleydrye.com
mhazzard@kelleydrye.com

Tad J. (T.J.) Sauder
Manager, ILEC Performance Data
Birch Telecom of the South, Inc.
2020 Baltimore Avenue
Kansas City, MO 64108
Tel. No. (816) 300-3202
Fax. No. (816) 300-3350
tsauder@birch.com

John D. McLaughlin, Jr.
KMC Telecom
1755 North Brown Road
Lawrence, Georgia 30043
Tel. No. (678) 985-6262
Fax. No. (678) 985-6213
jmclau@kmctelecom.com

Andrew O. Isar
Miller Isar, Inc.
7901 Skansie Avenue
Suite 240
Gig Harbor, WA 98335-8349
Tel. No. (253) 851-6700
Fax. No. (253) 851-6474
aisar@millerisar.com

Renee Terry, Esq.
e.spire Communications, Inc.
7125 Columbia Gateway Drive
Suite 200
Columbia, MD 21046
Tel. No. (301) 361-4298
Fax. No. (301) 361-4277
rterry@e.spire.com

Mr. David Woodsmall
Mpower Communications, Corp.
175 Sully's Trail
Suite 300
Pittsford, NY 14534-4558
Tel. No. (585) 218-8796
Fax. No. (585) 218-0635
dwoodsmall@mpower.com

Suzanne F. Summerlin, Esq.
Attorney At Law
2536 Capital Medical Blvd.
Tallahassee, FL 32308-4424
Tel. No. (850) 656-2288
Fax. No. (850) 656-5589
summerlin@nettally.com

Dulaney O'Roark III (+)
WorldCom, Inc.
Six Concourse Parkway
Suite 3200
Atlanta, GA 30328
Tel. No. (770) 284-5498
De.ORoark@mci.com

Claudia E. Davant
AT&T
State President Legislative and
Regulatory Affairs
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301
Tel. No. (850) 425-6360
Fax. No. (850) 425-6361
cdavant@att.com

Wayne Stavanja/Mark Buechele
Ann Shelfer
Supra Telecommunications
1311 Executive Center Drive
Suite 200
Tallahassee, FL 32301
Tel. No. (850) 402-0510
Fax. No. (850) 402-0522
ashelfer@stis.com
wstavanja@stis.com
mbuechele@stis.com

Robert A. Culpepper

#538064

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth Telecommunications, Inc. for the Opening of a Docket to Establish a New Performance Assessment Plan.	))))	Docket No.: ________ Filed: May 12, 2004

PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR THE ESTABLISHMENT OF A NEW PERFORMANCE ASSESSMENT PLAN

Pursuant to § 120.54(5)(b)(4) and § 364.01(3) and (4)(g), Florida Statutes, Rule 25-22.036, Florida Administrative Code, and other applicable law, BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia Corporation authorized to do business in the State of Florida as a local exchange company, by and through its undersigned counsel, petitions the Florida Public Service Commission ("Commission") to open a proceeding to establish a new transaction-based performance assessment plan for BellSouth in Florida. The existing Performance Assessment Plan ("Plan" or "Current Plan") was originally established by this Commission in Docket No. 000121-TP,[1] in connection with BellSouth's application pursuant to Section 271 of the Telecommunications Act of 1996 ("the Act") for interLATA long distance authority in Florida and was originally intended to ensure pursuant to Section 251(c) of the Act, that BellSouth continued to provide nondiscriminatory unbundled access, interconnection, and resale to competitive local exchange carriers ("CLECs").

As explained below, opening a docket to establish a new performance assessment plan is necessary because: (i) periodic review and modification of the Plan as originally envisioned by

---

[1] In Order No. PSC-02-0503-PCO-TP, issued April 11, 2002, Docket No. 000121-TP was divided into three subdockets (one each for BellSouth, Sprint, and Verizon). Docket No. 000121A-TP contains filings directed towards BellSouth.

this Commission is not occurring and appears unattainable, particularly with respect to the SEEM plan; (ii) BellSouth is not backsliding in the level of service provided to CLECs (i.e. performance) since receiving long distance authority in Florida; (iii) the Plan's fees and fee calculation methodology generate excessive penalties that constitute an ineffective deterrent against backsliding; and (iv) many of the Plan's measurements are unnecessary to ensure that BellSouth continues to perform at a satisfactory and non-discriminatory level and tracking such measurements unduly complicates and undermines the efficiency of the Plan. In support of this Petition, BellSouth states the following:

1. Petitioner, BellSouth, is a telecommunications carrier in Florida operating as a local exchange company and an intraLATA toll carrier. Its principal Florida business offices are located at 150 West Flagler Street, Suite 1910, Miami, Florida 33130. Notices, pleadings, orders and other papers in this docket should be furnished to the following:

BellSouth Telecommunications, Inc.
Nancy B. White
c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, Florida 32301

I. BACKGROUND AND DISCUSSION OF KEY MEASURMENT TERMS

2. The Commission opened Docket No. 000121-TP to develop permanent performance metrics to be used to ensure that BellSouth and other Florida Incumbent Local Exchange Carriers ("ILECs") provide CLECs with non-discriminatory access to their respective operations support systems ("OSS") and networks. Following several workshops held in 2000; a three-day hearing held in April 2001, and post-hearing briefing by the parties; the Commission

established permanent measures and a voluntary self-executing enforcement mechanism for BellSouth in Order No. PSC-01-1819-FOF-TP, issued September 10, 2001 ("*Final Order*"). The Commission approved a Plan that contained many portions of BellSouth's proposed performance assessment plan; some aspects of proposals presented by the ALEC Coalition; and other aspects that were not presented by the parties.[2]

3. BellSouth modified its proposed plan in a manner consistent with the *Final Order*. In January 2002, BellSouth submitted for Commission approval a proposed plan consisting of two parts: a Service Quality Measurement Plan ("SQM" or "SQM plan") and its Self-Effectuating Enforcement Mechanism Administrative Plan ("SEEM" or "SEEM plan"). The SQM plan contains, among other things, business rules, performance measures, performance submeasures, and exceptions to such measures. The SEEM plan includes, among other things, the fees BellSouth must pay for failing to meet the performance standards for certain SQM measures (or submeasures). Such fees are paid to either a CLEC (Tier-1 payments) or to the Commission (Tier-2 payments). The Commission found the SQM and SEEM plans to be in compliance with the *Final Order* and thus approved the Plan in Order No. PSC-02-0187-FOF-TP, issued February 12, 2002, as amended by Order No. PSC-0187A-FOF-TP, issued March 13, 2002, (collectively, "*Plan Approval Order*"). The Plan as submitted and approved called for periodic reviews of the Plan every six months following adoption of the Plan.

---

2 *Final Order*, at pp. 200-204.

4. Following issuance of the *Plan Approval Order* and in accordance with the *Final Order*,[3] the initial six-month periodic review started in September 2002. Specifically, workshops involving all interested parties and Commission staff were held in September and October 2002. These workshops and associated Commission staff recommendations resulted in two Commission Orders that modified the SQM only.[4] In accordance with such Orders, a revised SQM was filed on July 1, 2003. The SQM, however, is only one piece of the Plan. A complete Plan requires a Commission approved SQM and SEEM. As discussed below, for almost two years, the parties have been arguing over a limited change, resulting from the *Final Order* on the existing mechanism for assessing SEEM payments. As such, the initial six-month periodic review remains open, even though the Plan clearly anticipated and contemplated that at least three periodic reviews, and accompanying modifications to the Plan would have been accomplished by now.

5. Throughout this Petition, certain key terms that have unique meaning in the context of performance measurement plans will be repeatedly used, and thus for the Commission's convenience they are discussed here. The SQM specifies the method for calculating data. Data is reported on many different functions that BellSouth performs for CLECs. Each unique function is identified as a measure (or metric) in the SQM, and there are 76

---

3 *Final Order*, at p. 204 (ordering "that this docket shall remain open for the periodic reviews of the Performance Assessment Plan to begin six months after approval of the Performance Assessment Plan.").

4 Order No. PSC-02-1736-PAA-TP, issued December 10, 2002; and Order No. PSC-03-529-PAA-TP, issued April 22, 2003.

such measures. The term "SQM measure" refers to one or more of these 76 measures. Percent Missed Installation Appointments is an example of an SQM measure. However, data is not typically reported on a consolidated basis for all instances where performance is recorded for a measure. Instead, the data is reported for individual subgroups of activity within a measure. The process for establishing these subgroups is called disaggregation and the description of each subgroup is identified within that SQM measure. With full disaggregation for items such as products, dispatch type, and volume, these 76 SQM measures "balloon" into approximately 2,240 actual data points.[5] Each of these data points is referred to either as a submetric or a submeasure. Percent Missed Installation Appointments for Loop/Port Combinations on orders with less than 10 circuits where a technician was dispatched to the CLEC customer's premises is an example of a submetric or submeasure. In most cases, data is reported for the aggregate of all CLECs and for each CLEC individually, so the amount of data reported is enormous. Another frequently used term is SEEM. SEEM payments (or penalties) are determined separately for individual groupings of those SQM submetrics where penalties apply. These individual groupings, set forth in the SEEM plan, are referred to as SEEM submetrics (or measures), and there are 830 such SEEM submetrics in the Current Plan.

6. Upon the opening of a new docket, BellSouth will file a proposed performance assessment plan ("proposed plan") comprised of two familiar parts: SQM and SEEM plans. The proposed SQM will be a comprehensive compilation of <u>relevant performance measurements</u> with appropriate retail analogs and benchmarks. The proposed SEEM will be an enforcement

---

5 Statewide or regionwide results are reported on 1,902 submetrics.

mechanism plan that will generate more rational remedy payments to be paid in the event BellSouth fails to provide CLECs with a level of service that complies with the SQM, that is, service comparable to BellSouth's own retail operation or service that meets established benchmarks. Taken together, the proposed SQM and SEEM will provide the Commission with an improved performance measurement and enforcement mechanism for determining whether BellSouth continues to meet the Act's nondiscriminatory access, interconnection, and resale obligations. Upon Commission approval, the proposed plan will supercede and replace the Current Plan.

II. NO PERFORMANCE BACKSLIDING SINCE RECIEPT OF § 271 AUTHORITY

7. In September 2002, when BellSouth applied to the Federal Communications Commission ("FCC") for a grant of Section 271 authority in Florida, BellSouth submitted data indicating that its performance met or exceeded the performance standard for 79% of the metrics (and submetrics) that contained a statistically significant level of activity for the three-month period of May through July 2002.[6] The FCC relied on such data (and other information) in determining that: (i) the Florida local market was open; (ii) BellSouth had met the competitive

6 BellSouth's performance during such period averaged 79% when evaluated under the current performance reporting structure and with the performance assessment plan that was in effect at that time. i.e. the Georgia Plan a/k/a the Florida Interim Plan. The current reporting structure is more stringent than the performance reporting structure in effect in 2002. For example, the performance standard for Firm Order Confirmation ("FOC") Timeliness, Partially-Mechanized LSRs, was raised from 85% in less than 10 hours to 95% in less than 10 hours.

checklist requirements of Section 271(B) of the Act; and (iii) that BellSouth's entry into the long distance was in the public interest.[7]

8. Since receiving long distance approval, BellSouth's performance has been at or above the level of performance the FCC considered satisfactory in granting Section 271 authority. For example, during a recent six-month period (September 2003 through February 2004), BellSouth's overall performance level was 81%. However, this performance is based on the current SQM which has more stringent performance standards for several measurements than the SQM that was in effect when this Commission and the FCC agreed that BellSouth's performance was adequate to meet the requirements of Section 271 of the Act. For example, the measurement standard for Percent Flow-Through Service Requests (UNE-P) was raised from 85% to 90% (see additional example in footnote 6). As a result, even though the percent of submetrics met is better than when the Commission supported, and the FCC granted, Section 271 authority, the actual overall service level provided to the CLECs has improved more than the 2% difference simply indicates because the standard of performance has been raised. Even though BellSouth's overall performance level is at or above BellSouth's overall performance level upon which Section 271 authority was granted, BellSouth has paid approximately $2.3 million per month in Tier-1 SEEM payments in 2003 and through the first two months of 2004. Given the

---

[7] Memorandum Opinion and Order, *In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Authorization To Provide In-Region, InterLATA Services in Florida and Tennessee,* WC-Docket No. 02-307, FCC 02-331 (December 19, 2002) ("*BellSouth Florida/Tennessee Order*"), at ¶ 165.

absence of performance backsliding, there is no rational relationship between the level of performance and the level of payments.

9. BellSouth is not backsliding in Florida. As will be discussed in greater detail later in this Petition, BellSouth's experience in Florida demonstrates that Florida's measurement-based remedy calculation plan is an inefficient way to prevent backsliding. Attached as Exhibit "A" to the Petition is a chart showing BellSouth's overall performance level in each of its nine states for the six-month period of September 2003 through February 2004. The chart also shows the average SEEM payment per 1,000 CLEC lines in each state for the same time period. During such time period, BellSouth paid, in SEEM penalties, an average of $2,225 per month, per 1,000 CLEC lines in service in Florida. This amount is astronomical when one considers that: (i) the vast majority of CLEC lines experience no performance problems; and (ii) there are over 1 million CLEC lines in Florida. Viewed another way, despite the presence in Florida of approximately 30% of the total CLEC lines in BellSouth's region, CLECs operating in Florida received almost 50% of all Tier-1 payments paid to CLECs in BellSouth's region for the first two months of 2004. Such payments are not the result of relatively poor or deteriorating performance. Again, as Exhibit "A" indicates, BellSouth's performance in Florida is similar to BellSouth's performance in the other states where BellSouth provides local service.

III. PROBLEMS WITH THE CURRENT PLAN

A. The Protracted, Continuing Nature of the Initial Six-Month Periodic Review Demonstrates that the Periodic Review Process is not Working as Envisioned by the Commission and is an Insufficient and Inefficient Mechanism for Considering and Implementing a Permanent Plan.

10. When the Commission opened Docket No. 000121-TP, a performance assessment plan was a new concept. Not surprisingly, the Commission approved a "living" Plan that, in theory, could be periodically modified in a collaborative fashion following implementation.[8] Reality has proven the theory wrong. Despite the passage of over 20 months and the best efforts of the Commission staff, ***the initial six-month review remains open.*** By implication (if not by definition), a periodic six-month review should be completed in less than six months. Otherwise, the findings or recommendations of such periodic review cannot be incorporated into the Plan prior to the start of the next six-month periodic review. Further, the Plan contemplates that at this juncture (over two years after Plan approval), that only an annual review would be necessary. *See* SEEM, Section 3.1 (quoted in footnote 8). It is respectfully submitted that the current situation is not what the Commission envisioned when it ordered periodic reviews.

11. Furthermore, the periodic six-month review process is designed to be an ongoing collaborative process that produces sequential and hopefully minor plan modifications (such as adding or deleting certain metrics or implementing certain administrative changes) that over time would have allowed the Plan to evolve into a workable, sustainable approach to insuring continued compliance with the relevant portions of the Act. It is a process wherein relevant information is reviewed, discussed, and as this occurs minor modifications are made to the Plan. It is clear now that the periodic review process is not working, and has been ineffectual in

[8] SEEM, Section 3.1 (Modification to Measures) ("During the first two years of implementation, BellSouth will participate in six-month review cycles starting six months after the date of the Commission order. A collaborative work group, which will include BellSouth, interested ALECs [CLECs] and the Commission will review the Performance Assessment Plan for additions, deletions or other modifications. After two years from the date of the order, the review cycle may, at the discretion of the Commission, be reduced to an annual review.")

correcting fundamental flaws in the Plan. The following analogy illustrates this important difference. If the Plan were an automobile, the periodic review process could be considered a Jiffy Lube, i.e. a place to take an automobile for routine matters such as an oil change. However, if one fails to properly care for an automobile, through periodic maintenance, one will eventually be in need of an engine overhaul, which is the current situation with the Plan. That is, the Plan needs an overhaul (not an oil change) and the opening of a new docket is the appropriate first step in the repair process.

12. Moreover, even though one six-month review regarding SEEM was initiated (the initial one) it has been limited to a relatively minor modification of the existing SEEM Plan. The current SEEM review which has been underway since September 2002, has been limited to only one facet of the SEEM plan -- how to incorporate a severity of a performance failure component into SEEM. This effort was required by the *Final Order*, so no effort to update the Current Plan based on experience gained has been initiated. Because the Current Plan does not readily accommodate this feature, the parties have been unable to reach an agreement regarding severity. As recently stated by the Commission staff:

> Since the first six-month review began in September 2002, the parties and staff have attempted to resolve the issue of how best to incorporate the severity of a performance measure failure in the remedy payment plan (i.e. SEEM). In issuing its Final Order, the Commission explained that a severity feature was not being incorporated at that time since there were serious concerns with the proposals offered by BST and the CLEC Coalition . . . . **Numerous efforts (workshop, conference calls, and formal and informal submissions) have been made to address these concerns, although no resolution has been reached.**[9]

[9] Docket No. 000121A-TP, January 22, 2004, Revised Staff Recommendation (emphasis added).

Substantially similar language is contained in a prior staff recommendation.[10] (collectively, "Staff SEEM Recommendations"). As the Staff SEEM Recommendations demonstrate, reaching agreement on narrowly focused SEEM matters cannot be accomplished in a timely manner in accordance with the six-month periodic review process. As such, the likelihood of correcting broader fundamental Plan flaws in the six-month review process is remote, if not nonexistent.

13. At best, and notwithstanding the best efforts of the Commission staff, the initial six month periodic review will produce an **interim** SEEM solution.[11] Docket No. 000121-TP was opened to establish **permanent** performance metrics and associated monitoring and enforcement mechanisms. Given the nature of Tier-1 payments, the periodic review process is unlikely to produce a mutually agreed upon permanent SEEM proposal. As discussed below, since many Tier-1 fees are exorbitant, CLECs have no incentive to agree to revise such penalties. The practical result is a CLEC game plan or negotiating tactic that is geared towards maintaining the *status quo*, which results in an apparent ever-increasing amount of SEEM payments. Given the opened-ended nature of the initial six-month periodic review, the apparent CLEC game plan is working.

---

10 Docket No. 000121A-TP, August 7, 2003, Staff Recommendation (deferred at the request of the parties).

11 As stated by Sally Simmons of the Commission staff: "Staff has held numerous conference calls with the parties since last August to identify both theoretical and empirical issues and to try to come with possible solutions. . . . . It's a very difficult balancing act . . . ." Docket No. 000121A-TP, Transcript of February 3, 2004 Agenda Conference (Tr. p. 3, line 25 through p. 4, line 7). Simmons went on to state that 'this whole process has been very difficult. It has been going on for quite a while. I think we're in a little bit of a procedural dilemma in terms of what will be the most expeditious way to get this matter handled." (Tr. p. 17, line 23 through p. 18, line 2).

14. From an efficiency perspective, opening a new docket makes sense. Again, the ongoing nature of the initial six-month periodic review demonstrates that vast amounts of time and resources are being devoted towards coming up with an **interim** SEEM severity solution. Despite such efforts, the SEEM plan remains mired in endless debate and disagreement. Almost three years have passed since this Commission issued its *Final Order*. It is respectfully submitted that the Commission (and the citizens of Florida) would be better served by the opening of a new docket; the filing of a new proposed plan; and the presentation of evidence (by all interested parties) that would take into account the lessons learned since the issuance of the *Final Order* in September 2001.

B. The Current Plan's Fee Schedule Generates Exorbitant Penalties That Bear No Rational Relationship to Performance Provided to CLECs or the Service Charges Associated with Such Penalties.

15. A new SEEM fee plan is necessary because the current SEEM fee schedule generates exorbitant penalties that have no rational relationship to the damage (if any) sustained by a CLEC as a result of a missed performance measurement standard. Additionally, such penalties amount to years (sometimes decades) worth of free service to a CLEC when one compares the penalty paid to a CLEC to the recurring charge such CLEC pays for the service associated with the penalty. Including excessive penalties in a SEEM plan is contrary to the concept that good performance should result in few, if any, payments for a failure to perform. This is particularly true in the absence of backsliding.

16. Examples of excessive SEEM payments are numerous. The following are examples of actual SEEM payments in Florida. They are provided for illustrative purposes only,

and therefore do not represent a complete list of excessive SEEM penalties that produce economically irrational examples.

FLORIDA SEEM PAYMENT EXAMPLES

During the period of August through October 2003, BellSouth paid over $7.3 million in Tier-1 payments to CLECs in Florida. Of this total, over $6.6 million (or greater than 90% of the $7.3 million) came from only 8 SQM measures. Furthermore, there were many instances where BellSouth paid excessive payments to CLECs for one trouble report or for installation and repair intervals that actually were less (i.e. better) than similar intervals for BellSouth retail customers. A discussion of the SEEM payments for these eight measurements follows:

(i) <u>CUSTOMER TROUBLE REPORT RATE (CTRR)</u>

This metric is simply the number of trouble reports in a month divided by the units or lines in service. In the existing Florida SEEM plan, CTRR is disaggregated into 20 different SEEM measures . For instance CTRR – 2W Analog Loop Design and CTRR - Loop & Port Combo are both UNE SEEM measures . CTRR - Resale Business is an example of a Resale SEEM measure . BellSouth paid over $2.2 million in Tier-1 payments to individual CLECs during the period from August through October 2003 for the various UNE and Resale SEEM measures that have been established for CTRR. Of the $2.2 million, almost $2.0 million was paid for UNE SEEM measures during such period. A significant point is that BellSouth paid almost $2 million in Tier-1 SEEM payments for CTRR despite the fact that the overall average Customer Trouble Report Rate for this time period was approximately 2%. This means that the CLECs were provided over 98% trouble free service (100% less the 2% trouble report rate) to the

CLECs during this three-month period. The following are some examples where CLECs received SEEM payments for just one trouble reported in a given month for all its in-service base of circuits for a particular product:[12]

[12] Out of an abundance of caution, the CLECs are not identified in the SEEM payments examples. For the Commission's review only, the identity of such CLECs will be provided in a separate, proprietary filing. Once appropriate measures to protect proprietary information are established, BellSouth will disclose the identity of such CLECs to all interested parties.

CLEC	Product	Month '03	SEEM $	Trouble Reports / In Service Circuits
CLEC-1	Local Interconnection Trunks	September	$1,200	1 / 5733
CLEC-2	UNE Combo Other	September	$4,750	1 / 12
CLEC-3	Digital Loop ≥ DS1	August	$14,250	1 / 34
		September	$14,250	1 / 38
CLEC-4	UNE ISDN Loop	September	$6,650	1 / 51
CLEC-5	UNE ISDN Loop	August	$4,750	1 / 48
CLEC-6	UNE Loop & Port Combo	August	$4,750	1 / 19

In every instance above, the CLEC simply claimed on one occasion that the CLEC had experienced a trouble. Significantly, there may not have been a condition where the customer's service was impaired. Yet, because the circuits in service were relatively small – such as the 12 circuits on the second item in the table, the trouble report rate, 1 divided by 12, was 8% and was above the retail comparison primarily due to the comparatively large number of retail lines in service. For each item above, the single trouble report generated a SEEM payment ranging from $1,200 to $14,250. Since the monthly rate for these services averages approximately $100, the SEEM payment for a single trouble report is equivalent to literally years of service – for free.

(ii) PERCENT PROVISIONING TROUBLES WITHIN 30 DAYS (PPT)

PPT measures the number of service orders where troubles were reported within 30 days of service order completion. In the existing Florida SEEM plan, this SQM measure is disaggregated by product, as noted under Customer Trouble Report Rate above, and also by greater than 10 circuits, less than 10 circuits, dispatch and non-dispatch (a dispatch means a technician had to be dispatched to the customer's premise). The result is 109 Tier-1 SEEM measures for each CLEC. BellSouth paid over $1,100,000 in Tier-1 payments during the period from August through October 2003 for both UNE and Resale SEEM measures for PPT. Of the total of $1,100,000, $976,000 was paid for UNE service order installations that had trouble rates of 4% or less. In other words, BellSouth paid $976,000 in UNE Tier-1 SEEM payments while installing over 96% of the service orders perfectly, without a trouble report (as with the Customer Trouble Report Rate [above], a trouble report does not necessarily mean the customer's service was impaired). The following are some examples where CLECs received SEEM payments for just one trouble reported in a given month for all circuits that were installed in the previous 30 days:

CLEC	Product/dispatch	Month '03	SEEM $	Trouble Reports / Installed Circuits
CLEC-7	2WAnalog Loop Design with LNP Non Dispatch	October	$4,750	1 / 6
CLEC-8	UNE Loop & Port Dispatch-In	October	$4,750	1 / 22
CLEC-6	UNE Loop & Port Dispatch-In	September	$4,750	1 /16
CLEC-9	UNE Loop & Port Dispatch-In	September	$4,750	1 / 17
CLEC-7	2WAnalog Loop Design Dispatch	October	$4,750	1 / 5
CLEC-10	EELs Dispatch	October	$4,750	1 / 12
CLEC-10	UNE Loop & Port Switched Based Orders	September	$10,450	1 / 24

As with the Customer Trouble Report rate, the SEEM payment is equivalent to many years of BellSouth revenue for the service.

(iii) PERCENT REPEAT TROUBLE REPORTS WITHIN 30 DAYS (PRT)

As the name implies, this measure captures the frequency of repeat troubles reports by dividing the number of trouble reports on lines that had one or more trouble reports within the preceding 30 days by the total number of trouble reports. This measure has the dubious distinction of actually penalizing BellSouth for maintaining a high quality network. If the quality of the network is such that there are few troubles reported (as noted above where the trouble-free rate was 98%) any repeat trouble is likely to produce a high repeat trouble rate, which as a result, triggers SEEM penalties. For instance BellSouth paid over $514,000 in Tier-1 payments during the period from August through October 2003 for both UNE and Resale SEEM measures for PRT. Of the $514,000, BellSouth paid over $469,000 in UNE Tier-1 SEEM payments, even though the overall CLEC rate was actually lower (better) than the retail comparison. The following are some examples where CLECs received SEEM payments for overall repeat rates in a given month that were less than the retail comparison:

CLEC	Product/dispatch	Month '03	SEEM $	CLEC Rate / Retail Rate
CLEC-3	UNE Loop & Port Dispatch	August	$4750	17.23 / 18.81
		September	$6650	12.00 / 18.32
CLEC-11	UNE Loop & Port Dispatch	September	$4750	10.60 / 18.32

Paying for superior service (as above) can occur when the number of CLEC troubles is small and is concentrated in a relatively few wire centers. Once again, the penalty amounts to several years of free service to the CLEC.

(iv) <u>ORDER COMPLETION INTERVAL (OCI)</u>

This measure reflects the time period from receipt of a valid order from the CLEC to the delivery of the service to the end-user. In the existing Florida SEEM plan this SQM measure is disaggregated by product, and also by greater than 10 circuits, less than 10 circuits, dispatch and non-dispatch. The result is 125 Tier-1 SEEM measures for each CLEC. An example of a UNE SEEM measure is "Average Completion Interval (OCI) & Order Completion Interval Distribution, Non-Dispatch Dispatch in < 10 - UNE Loop and Port Combo." BellSouth paid over $666,000 in Tier1 payments during the period from August through October 2003 for both UNE and Resale OCI SEEM measures. Of the $666,000, BellSouth paid over $198,000 in Tier1 SEEM payments just for the UNE Loop & Port Combinations Non Dispatch sub-metric where the aggregate OCI interval for the CLECs was 1.37 days, bettering the retail analog of 2.18 days during the three-month period. The following are some examples where CLECs received SEEM payments even though their orders were completed in a shorter interval than the retail comparison. All of these measurements have less than 10 circuits per order.

CLEC	Product/dispatch	Month '03	SEEM $	CLEC interval / Retail interval (days)
CLEC-7	2W Analog Loop Design Non Dispatch	August	$6,650	4.00 / 4.68
CLEC-12	UNE Loop & Port Combo Non Dispatch	October	$4,750	2.50 / 2.57

CLEC-1	UNE Loop & Port Combo Non Dispatch	October	$4,750	2.33 / 2.57
CLEC-10	2W Analog Loop w/LNP Design Dispatch	September	$6,650	4.33 / 4.47

Once again, the SEEM payment is exorbitant (several years of service) when compared to the level of service received. Again in each of these instances the CLEC orders were installed on average more quickly than the comparable retail orders.

(v) PERCENT OUT OF SERVICE > 24 HOURS (OOS)

This measure captures troubles, which result in an out-of-service condition (can't call or be called) that are not resolved within 24 hours. BellSouth paid over $512,000 in Tier-1 payments during the period from August through October 2003 for both UNE and Resale SEEM measures for OOS. Of the $512,000, BellSouth paid over $431,000 in UNE Tier-1 SEEM payments even though the total aggregate percentage of troubles out of service greater than 24 hours for the CLECs was 8% less (better) than the retail analog comparison. The following are some examples of payments to CLECs for just one trouble out of service greater than 24 hours in a given month:

CLEC	Product / dispatch	Month '03	SEEM $	Reports OOS > 24 / Total OOS Reports
CLEC-13	UNE Digital Loop ≥ DS1 Dispatch	September	$4,750	1 / 15
CLEC-1	UNE Digital Loop ≥ DS1 Dispatch	August	$4,750	1 / 11
CLEC-14	UNE ISDN Dispatch	October	$4,750	1 / 9
CLEC-15	UNE ISDN Non Dispatch	September	$4,750	1 / 20

CLEC-10	UNE ISDN Non Dispatch	October	$4,750	1 / 22
CLEC-3	UNE Loop & Port Combo Non Dispatch	August	$4,750	1 / 8
CLEC-16	UNE Loop & Port Combo Non Dispatch	August	$6,650	1 / 35
		October	$4,750	1 / 13

This measurement is another metric that can penalize BellSouth for good service. Since this measurement divides the total number of out of service troubles greater than 24 hours by the total number of out of service troubles, the fewer the total out of service troubles, the greater the potential for generating a penalty with just one trouble. The two examples with 9 and 8 troubles respectively illustrate this problem. As with many of the other examples, the SEEM payment of $4,750 or above for one trouble is significantly disproportionate to the level of service received when compared to the monthly rate for the service.

(vi) PERCENT MISSED INSTALLATION APPOINTMENTS (PMIA)

This measure shows BellSouth's ability to install service on the scheduled day. In the existing Florida SEEM plan this metric is disaggregated by product, and also by greater than 10 circuits, less than 10 circuits, dispatch and non-dispatch. The result is 125 Tier 1 SEEM measures for each CLEC. BellSouth paid over $559,000 in Tier 1 payments during the period from August through October 2003 for both UNE and Resale SEEM measures for PMIA. Of the $559,000, BellSouth paid over $500,000 in UNE Tier-1 SEEM payments, even though less than 1% of the installation appointments were missed. In other words, BellSouth met over 99% of all scheduled installation commitments during this three month period – but the SEEM plan required payments of $500,000. The following are some examples where CLECs received SEEM payments for <u>just one</u> missed installation appointment:

CLEC	Product/dispatch	Month '03	SEEM $	Missed Appt. / Total Appts.
CLEC-6	2WAnalog Loop Design Dispatch	September	$4,750	1 / 8
		October	$6,650	1 / 9
CLEC-12	2WAnalog Loop Design with LNP Dispatch	September	$4,750	1 / 8
CLEC-10	2WAnalog Loop Design with LNP Dispatch	August	$4,750	1 / 18
CLEC-8	2WAnalog Loop Non Design with LNP Dispatch	August	$6,650	1 / 16
		September	$8,550	1 / 10
CLEC-10	EELs Dispatch	September	$4,750	1 / 14
CLEC-13	EELs Dispatch	August	$6,650	1 / 52
CLEC-1	EELs Dispatch	September	$6,650	1 / 49

Again, these excessive SEEM payments are not warranted when compared to the level of service provided and to the monthly rate the CLEC pays for these products.

(vii) <u>PERCENT MISSED REPAIR APPOINTMENTS (PMRA)</u>

PMRA measures BellSouth's ability to resolve a trouble report by the committed date and time. BellSouth paid over $479,000 in PMRA Tier-1 payments during the period from August through October 2003 for both UNE and Resale products. Of the $479,000, BellSouth paid over $436,000 in UNE Tier-1 SEEM payments while missing 6% of the repair commitments to the CLECs. Said another way, even though BellSouth met 94% of all scheduled repair commitments, the SEEM plan required payments of $436,000. The following are some examples where CLECs received SEEM payments for <u>just one</u> missed repair appointment:

CLEC	Product/dispatch	Month '03	SEEM $	Missed Appt. / Total Appts.
CLEC-14	UNE Combo Other Dispatch	August	$4,750	1 / 6
CLEC-14	Digital Loop ≥ DS1 Dispatch	September	$4,750	1 / 15
CLEC-1	Digital Loop ≥ DS1 Dispatch	August	$4,750	1 / 11
CLEC-10	UNE Loop & Port Combo Dispatch	August	$4,750	1 / 6
CLEC-15	UNE Loop & Port Combo Dispatch	September	$4,750	1 / 6
CLEC-16	UNE Loop & Port Combo Dispatch	October	$6,650	1 / 8
CLEC-10	2W Analog Loop Non-Design Non Dispatch	August	$4,750	1 / 12
CLEC-10	UNE ISDN Loop Non Dispatch	October	$4,750	1 / 22
CLEC-17	UNE Loop & Port Combo Non Dispatch	August	$6,650	1 / 43
		October	$4,750	1 / 26

These excessive SEEM payments are not warranted when compared to the level of service provided and the charge for the affected service. As with other SEEM measures, Percent Missed Repair Appointment results can penalize BellSouth for providing good service. In this instance, the more reliable a network, the fewer trouble reports and repair appointments. And, as a result, there is a greater potential for SEEM payments from just one missed appointment. As noted above, a miss of just one appointment, perhaps for only a few hours, resulted in a payment of nearly $5,000. Once again, a slight miss resulted in providing the CLEC the equivalent of years of free service.

(viii) MAINTENANCE AVERAGE DURATION (MAD)

This measure indicates the amount of time from receipt of a trouble report until it is cleared. It is disaggregated by product and by dispatch type. BellSouth paid over $578,000 in Tier-1 payments during the period from August through October 2003 for UNE and Resale SEEM measures for MAD. Of the $578,000 total, BellSouth paid over $502,000 in UNE Tier-1 SEEM payments even though 85% of the MAD measurements indicate that BellSouth cleared the CLECs' troubles more quickly than the comparable retail service. The following are some examples where CLECs received SEEM payments even though their average durations were less (better) than the retail comparison:

CLEC	Product / dispatch	Month '03	SEEM $	CLEC duration / Retail dur. (hours)
CLEC-14	Digital Loop ≥ DS1 Dispatch	October	$6,650	4.25 / 5.01
CLEC-8	Digital Loop ≥ DS1 Dispatch	August	$4,750	4.72 / 5.51
CLEC-18	Digital Loop ≥ DS1 Dispatch	October	$4,750	4.57 / 5.01
CLEC-19	Digital Loop ≥ DS1 Dispatch	September	$4,750	6.96 / 7.94
CLEC-18	UNE ISDN Loop Dispatch	September	$4,750	5.46 / 6.21
CLEC-20	UNE ISDN Loop Dispatch	August	$4,750	5.90 / 8.12
CLEC-18	UNE Line Sharing Dispatch	September	$4,750	23.86 / 28.20
CLEC-21	UNE Loop & Port Combo Dispatch	October	$4,750	20.90 / 23.71
CLEC-3	UNE Loop & Port Combo Dispatch	August	$4,750	20.10 / 27.26
CLEC-10	UNE Loop & Port Combo Dispatch	August	$4,750	25.41 / 27.26

As shown in the examples above, BellSouth is paying extreme SEEM payments while providing strong, quality service to the CLECs. The payments to the CLECs are not based on poor service quality and certainly cannot be reduced significantly by providing a better grade of service, short of perfection.

C. The Current Plan's Measurement-Based Remedy Calculation Methodology is a Principal Contributor to the Generation of Exorbitant Penalties and is an Inefficient Deterrent Against Performance Backsliding.

17. As shown in Exhibit "A", SEEM payments in Florida are higher on a per 1,000 CLEC line basis than in seven of the remaining states in BellSouth's region (Tennessee,[13] which adopted Florida's Plan, has the highest SEEM payment per 1,000 CLEC average payment). By dividing the monthly SEEM payments in each state by the number of CLEC lines in service, then multiplying this figure by 1,000 allows each state's SEEM payments to be compared on a common basis. Obviously, BellSouth's performance generates SEEM payments. That said, Exhibit "A" shows that although BellSouth's overall performance level varies by state, the variance falls within a narrow range. Despite a similar level of performance, Exhibit "A" the Florida SEEM payments are substantially greater.

18. From an effective and efficient Plan perspective, the payment of excessive Tier-1 penalties generated by a measurement-based remedy calculation plan ("measurement-based

[13] Tennessee adopted the Florida Plan in October 2002. As a result thereof, Tennessee (like Florida) has a disproportionate share of Tier-1 payments relative to the number of CLEC lines in service.

plan") does not further the Commission's goal of preventing performance backsliding. Put another way, Exhibit "A" demonstrates that BellSouth's performance is no better in the states that have a measurement-based plan (Florida and Tennessee) nor is BellSouth's performance any worse in the other seven states where BellSouth pays penalties pursuant to a transaction-based plan. In short, the difference in the level of payments is not reflective of worse performance in Florida, but is principally a result of the fact that in the other states in BellSouth's region, with the exception of Tennessee,[14] determine Tier-1 payment calculations based on the number of transactions that are out-of-parity, while Florida (and Tennessee) assign penalties based on whether BellSouth has missed the performance standard for an individual measurement or submeasurement, without any regard to the actual number of CLEC transactions involved with the missed performance standard. With no performance backsliding, who benefits from excessive Tier-1 penalty payments? The CLECs who receive such payments. That said, CLEC receipt of "windfall" Tier-I payments is neither an obligation of BellSouth under the Act nor a goal of the Commission.

19. Again, an essential problem with the current SEEM plan is the measurement-based aspect of the Plan's payment structure (i.e. remedy calculations). In the *Final Order*, the Commission ordered measurement-based SEEM remedies (i.e. payments). In so doing, the

---

[14] As shown on Exhibit "A", despite an identical plan and a similar overall performance rate (83% vs. 81%), Tennessee's monthly payment per 1,000 CLEC lines rate is substantially higher than the corresponding Florida rate. This odd outcome is primarily due to the fact that a measurement-based plan is not volume sensitive and therefore calculates SEEM payments based on a failure to meet a performance standard without any attempt to determine the number of transactions impacted by a missed performance standard. Placing such a plan in Tennessee, which has much lower level of CLEC activity than Florida, creates a much higher SEEM penalty per 1,000 CLEC line rate.

Commission recognized that "radically different remedy calculations"[15] had been proposed. However, given what the Commission perceived as potential problems with each of the proposed remedy plans, and the theoretical nature of the criticism regarding such plans, the Commission ruled that a measurement-based remedy calculation would be used on an initial basis:

> BellSouth is recommending transaction-based remedies, while the ALEC Coalition is advocating measure-based remedies. Under BellSouth's transaction-based remedy plan, a payment would be made based on some estimate of the number of discriminatory transactions for a measure and the type of measure. Under the ALEC Coalition's measure-based remedy plan, payments would be made based on a finding of discrimination for the measure, which would be independent of the number of transactions and the type of measure. . . . **[N]o real empirical data has been presented which can serve as a basis for the penalty amounts under either plan. Consequently, most of the criticisms of both plans are theoretical in nature.**[16]
>
> . . . .
>
> [T]here are fundamental flaws in both the BellSouth and ALEC Coalition remedy plans . . . . [As such] we find that the remedy plan must, at least initially, be measure-based . . . . Over time, it may be possible to evolve to a transaction-based system . . . . **[W]e believe that transaction based remedies, with a minimum payment provision, would be preferable in concept.**[17]

20. The rationale for adopting a transaction-based remedy calculation is straightforward. The SQM monitors performance by tracking various CLEC activities. When the SQM indicates that there is a statistically significant and material performance deficiency as defined by this Commission, a SEEM payment is calculated by multiplying the number of transactions out-of-parity by the applicable fee. Because a transaction-based payment plan is

15 *Final Order*, at p. 158.

16 *Id.* (emphasis added)

17 *Id.,* at p. 162 (emphasis added).

scalable (the more transactions where disparate service is detected, the higher the payment), there is no need to overlay a "severity" component into the plan because the nature of the plan design automatically incorporates severity. As the Commission is well aware , trying to graft this feature onto a measurement- based penalty plan creates an unnecessarily complicated plan that is intensely debated and not aligned with performance..

21. The concerns expressed by the Commission almost three years ago regarding adopting a transaction-based SEEM remedy plan, namely lack of data, no longer exist. That said, the Commission's vision that the initial SEEM remedy plan would "evolve" towards a transaction based remedy plan has not happened. Because the current measurement-based plan generates the payment of excessive penalties to the CLECs, the CLECs have no economic incentive to agree to revise the current remedy plan through the periodic review process.

22. In granting BellSouth authority to originate in-region InterLATA long distance calls in Florida pursuant to Section 271 of the Act, the FCC stated that a performance measurement plan such as SEEM is an effective enforcement mechanism for preventing "backsliding" by BellSouth in the level of service offered to CLECs after BellSouth's entry into the long distance market.

> [W]e find that the existing Service Performance Measurements and Enforcement (SEEM) plans currently in place for Florida and Tennessee provide assurance that these local markets will remain open after BellSouth receives section 271 authorization. . . . . Although it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms, the Commission has previously found that the existence of a satisfactory performance monitoring and enforcement mechanism is probative evidence that the BOC will continue to meeting its section 271 obligations after a grant of such authority.[18]

[18] *BellSouth Florida/Tennessee Order, at* ¶ 167.

23. In finding the Florida SEEM satisfactory, the FCC indicated that the SEEM contained "several key elements" such as "total liability at risk in the plan; performance measurement and standards definitions; structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures in the plan; and accounting requirements."[19] Upon the opening of a new docket, BellSouth will propose a new SEEM that retains all aforementioned "key elements".

24. The FCC recognized and anticipated that Florida's SEEM plan would change over time. Further, the FCC indicated, without any apparent concern, that the Florida SEEM plan would evolve towards a more commercially reasonable type of remedy such as liquidated damages:

> We have not mandated any particular penalty structure and we recognize different structures can be equally effective. **We also recognize that the development and implementation of performance measures and appropriate remedies is an evolunary process that requires changes to both measures and remedies over time.** . . . . We anticipate that the parties will continue to build on their own work and the work of other states to ensure that such measures and remedies to accurately reflect actual commercial performance in the local marketplace.[20]

25. In short, a SEEM plan (such as the current one) that results in the payment of excessive penalties compared to the level of performance delivered is not necessary from the FCC's perspective for an effective performance measurement plan and is contrary to the concept of an evolving SEEM that gravitates towards the inclusion of more commercially reasonable

---

19 *Id.*, at ¶ 169 and fn. 612.

20 *Id.*, at ¶ 170.

remedies.[21] As such, upon opening a new docket, BellSouth will file a new, proposed SEEM that: (i) provides more than sufficient safeguards against backsliding; (ii) rewards improved performance; and (iii) penalizes declining performance.

D. The Current SEEM Plan Contains Metrics and Submetrics That Serve No Useful Purpose. Including Such Metrics in the Plan Undermines the Monitoring Capability of the Plan and Generates Unwarranted SEEM Payments.

26. In addition to the problems caused by using a measurement-based remedy calculation plan instead of a transaction-based remedy calculation plan, the current SEEM plan contains metrics and submetrics that serve no useful purpose. Specifically, SEEM currently contains 830 submetrics at the Tier I level. There are over 200 CLECs in Florida. Since Tier I submetrics apply to all CLECs, there is a potential for over 166,000 SEEM determinations (830 submetrics x 200 CLECs). Too many submetrics (which are subject to further disaggregation and granularity) result in few or no transactions (or activity) in many submetrics. For example, an analysis of SEEM data for Florida taken from the three-month period of August through October 2003 indicated that, on average, there was no activity in 97% of the CLEC specific opportunities for the 830 SEEM measures. Of the minimal number (3%) of instances that exhibited some activity, many, had few transactions, i.e. less than thirty (30) transactions during a month.

21 In fact, in most states where the FCC has granted long distance authority to a Bell operating company ("BOC") pursuant to Section 271, the BOC is subject to a transaction-based performance measurement plan.

27. This excessive disaggregation results in small sample sizes. The smaller the sample size, the more likely the sample size will not produce statistically valid results. As such, measuring small sample sizes may be meaningless because the resulting measurement may be compromised from a statistical perspective. From a practical perspective, tracking numerous SEEM submetrics that generate few or no transactions is wasteful and indicates that BellSouth is tracking many measurements that are of inconsequential value to the CLECs.

28. Conversely, from a statistical perspective and assuming the same level of activity, reducing the number of SEEM measures increases the number of transactions used to produce each measurement result. Increasing the number of transactions in each SEEM measure, in turn, results in more reliable data. Accordingly, by simply consolidating submetrics that contain no or minimal activity, the Commission will improve the reliability of the Plan. That said, BellSouth is not seeking to revise the Current Plan's statistical test. Rather, BellSouth will request the Commission to refine other aspects of the Plan (such as the fee schedule) to alleviate the problems created by small sample sizes (such as Type I errors)[22]

D. The Current SQM Plan Contains Metrics and Submetrics That Serve No Useful Purpose. Including Such Metrics in the Plan Undermines the Monitoring Capability of the Plan.

29. Similar to concerns already expressed regarding the SEEM, the current SQM contains many measurements that serve no purpose because of the lack of CLEC activity in such

---

[22] A Type I error occurs when the results of a statistical test create the appearance that BellSouth is not providing service at parity when in fact BellSouth is providing service at parity.

measurements. That is, the SQM is designed to measure performance triggered by CLEC activity. Where there is no CLEC activity, there is nothing to measure. Of the 1,902 SQM submetrics with statewide or regionwide results, 401 are diagnostic - meaning that BellSouth does not compare such measurements to a performance standard such as a retail analogue or benchmark. As a result, these 401 diagnostic measurements tell the Commission nothing about the level of service BellSouth provides to CLECs.

30. Setting aside the diagnostic submetrics, there remains 1,501 SQM submetrics (1,902 minus 401) that are, in theory, useful in monitoring BellSouth's ability to provide CLECs with non-discriminatory access to its network and OSS. The theory does not hold true because of a lack of CLEC-generated activity (such as submitting orders or trouble tickets) in many SQM submetrics.

31. For example, an analysis of SQM data taken from January 2004, indicated that 35% of the non-diagnostic SQM submetrics had no activity. (529 out of 1,501). Continuing with the same data, there were 972 non-diagnostic (i.e. meaningful) submetrics with some level of activity (1,501 minus 529). During this period, 321 of such 972 submetrics only had activity levels between 1 and 30. As previously stated, measuring small sample sizes is a concern from a statistical perspective. Put another way, the January 2004 SQM data revealed that there was at best a statistically significant level of activity in only 671 non-diagnostic SQM submetrics. In percentage terms, the January 2004 data indicated that n no more than 35% of the current SQM

submetrics (671 out of 1,902) could be used by the Florida Commission to evaluate BellSouth's performance in January 2004.[23].

32. As discussed above in connection with SEEM, an SQM that contains too many measurements results in little or no transactions (or activity) in many measurements. Statistically speaking, small sample sizes are a concern because if the number of transactions falls below a statically valid sample size, the resulting measurement may be compromised. From a practical perspective, tracking numerous measurements that generate few or no transactions indicates that BellSouth is wasting time and resources by tracking many measurements that are of little or no value to the CLECs.

33. The Act opened the local market to competition over eight years ago. Over the past eight years, hundreds of CLECs with multitudes of business plans (resellers, facilities-based providers, non-facilities based providers) have entered the local market. CLEC activity, or more precisely the lack of CLEC activity in many of the SQM measurements, unquestionably shows that such majority of SQM measurements are of no value as a means to monitor BellSouth's performance. Consequently, including such measures in the SQM is useless because such measures have absolutely no bearing on whether BellSouth is providing CLECs with a level of service that comports with the Act's requirements.

---

23 The January 2004 data is representative of the low level of activity that occurs every month in most SQM measures.

V. CONCLUSION

34. The intent of the SEEM mechanism was, and is, to ensure that BellSouth does not backslide in the level of performance provided to CLECs in Florida. Despite continued strong, and occasionally improved performance, under the Current Plan, BellSouth continues to pay in SEEM payments about $2.5 million per month without a clear correlation between performance and reduced financial penalties. The periodic review process has proved to be an unsuitable forum for addressing and correcting Current Plan problems, such as the problems created by tracking measurements that serve no purpose (small sample size issues), and the inefficiencies and disincentives created by an excessive fee schedule and a measurement-based plan that generate exorbitant penalties. With the benefit of the data associated with operating under the Current Plan for the past two years, the goals of the Plan, as originally envisioned by this Commission, can be accomplished by opening a new proceeding and establishing a new transaction-based performance assessment plan for BellSouth in Florida.

WHEREFORE, BellSouth respectfully asks the Commission to open a proceeding to establish a new transaction-based performance assessment plan for BellSouth in Florida. Upon the opening of such a proceeding, BellSouth will file a proposed performance assessment plan (SQM and SEEM) consistent with this Petition.

Respectfully submitted this 12th day of May, 2004.

Nancy White By RAC

NANCY B. WHITE
c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5555

R. DOUGLAS LACKEY
ROBERT A. CULPEPPER
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0841

538058

EXHIBIT A

Relationship of SEEM payments per 1000 CLEC lines in Service - versus performance - % submetrics met (shown in parenthesis after State abbreviation)
September 2003 - February 2004