

ORIGINAL

Matilda Sanders

From: Daniels,Sonia C - LGCRP[soniadaniels@att.com]
Sent: Tuesday, October 26,2004 3:32 PM
To: Filings@psc.state.fl.us
CC: Lisa Harvey; PCHRISTE@psc.state.fl.us; rmulvany@birch.com; gwatkins@covad.com; mfeil@mail.fdn.com; Michael Gross; dst@tobinreyes.com; aleiro@idstel.com.com; NEdwards@itcdeltacom.com; Donna McNulty; Jerry Hallenstein;jmclau@kmctelecom.com; jacanis@kelleydrye.com; mhazzard@kelleydrye.com; jmcglothlin@mac-law.com; Vicki Gordon Kaufman; rheatter@mpowercom.com; danyelle.kennedy@networktelephone.net; Inowalsky@nbglaw.com; Michael Britt; Peter Dunbar; Susan Masterton; Dulaney L. O'Roark; Mark.Ozanick@accesscomm.com; mconquest@itcdeltacom.com; MCampbell@nuvox.com; TSauder@birch.com; Nancy Sims; Nancy White; Tracy Hatch; Chris McDonald; Musselwhite,Brian J - LGCRP; Ross-Bain,Martha M - LGCRP; Norris,Sharon E - LGCRP
Subject: RE: 000121A -- CLEC Response to Staffs Non-Technical Matrix (items 1-42)



CLEC

h Matrix Res

Docket No. 000121A-TP -- In re: Investigation into the Establishment of Operations Support system Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies (BellSouth track)

Attached please find for electronic filing the CLEC Coalition's Response to Staff's Non-Technical matrix items 1-42 regarding proposed SEEM changes in the above-referenced docket. The cover letter, certificate of service and the CLEC Coalition's Reply are a total of 19 pages. The attached document should be considered the official version for purposes of the docket file.

As indicated in the cover letter, copies of the CLEC Coalition's Response are being distributed to parties via electronic (in cases where e-mail addresses are available) and U.S. Mail. Thank you for your assistance in this matter.

<<CLEC Non-Tech Matrix Resp 10-26.pdf>>

Sonia Daniels
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ORIGINAL



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October 26,2004

BY ELECTRONIC FILING

Ms. Blanca Bayó, Director
The Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 000121A-TP

Dear Ms. Bayó:

Attached please find the CLEC Coalition's **Response** to Staff's "Non-Technical" matrix items 1-42 in the above-referenced docket. Pursuant to the Commission's Electronic Filing Requirements, this version should be considered the official copy for purposes of the docket file. Copies of this document will be served on all parties via electronic and U.S. Mail.

Thank you for your assistance with this filing.

Sincerely yours,

s/ Tracy W. Hutch

Tracy W. Hatch

TWH/las

Attachment

cc: Parties of Record

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the CLEC's Reply was served by

U.S. Mail this 26th **day** of October 2004 **to** the following:

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s/ Tracy W. Hatch

Tracy W. Hutch

FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 000121A-TP

**SEEM
“NON-TECHNICAL”
MATRIX**

**SEEM Non-Technical Matrix
CLEC Coalition Proposed Changes
BellSouth Proposed Changes**

Row #	Proposed Change	BST Reasoning	CLEC Response
1	<p>Reporting</p> <p>2.1 : ...with BellSouth's SQMs and pay penalties in accordance with the applicable SEEMs, which are posted on the Performance Measurement Reports website.</p>	<p>Clarification and correction.</p>	<p>➤ CLECs AGREE.</p>
2	<p>Reporting</p> <p>2.2: BellSouth will also provide electronic access to the available raw data underlying the SQMs.</p>	<p>Correction.</p>	<p>➤ CLECs AGREE.</p>
3	<p>Reporting</p> <p>2.4; Final validated SEEM reports will be posted on the Performance Measurements Reports website on the 15th day of the month, following the posting of final validated SQM reports for that data month or the first business day thereafter.</p>	<p>Clarification</p>	<p>➤ CLECs AGREE provided the language change does not negate BellSouth's responsibility to provide SEEM payments 15 days after month that succeeds the data month.</p>
4	<p>Reporting</p> <p>2.6: BellSouth shall pay penalties to the Commission, in the aggregate, for all incomplete or inaccurate reposted SQM reports in the amount of \$400 per day. See Appendix G for definition of "reposted."</p>	<p>Only changes that are significant enough to trigger reposting according to the criteria could have a meaningful effect on data accuracy.</p>	<p>➤ CLECs DISAGREE. Due to the criteria associated with reposting determinations, sanctions for incomplete or inaccurate reporting could be mitigated. BellSouth has provided no rationale for elimination of their obligation to pay penalties for incomplete or inaccurate reporting. The penalty is intended to motivate BellSouth to be complete in its reporting. BellSouth should not be allowed to hide bad results through an incomplete or inaccurate report.</p>
5	<p>Reporting</p> <p>2.7: Tier II SEEMs payments and Administrative fines and penalties for late; incomplete, and reposted reports will be sent via Federal Express to the Commission. Checks and the accompanying transmittal letter will be postmarked on or before the 15th of the month or the first business day thereafter.</p>	<p>To the extent that posted performance measurement reports are incomplete, the Reposting Policy covers the requirements to repost the data, and consequently to pay associated penalties. Accordingly, there is no need to reflect separately a penalty associated with incomplete reports. Wording is also provided to clarify that the due day for the postmarked</p>	<p>➤ CLECs DISAGREE IN PART AND AGREE IN PART. CLECs disagree with the elimination of penalties for incomplete reporting. It is possible to have an incomplete report that might not trigger the reposting requirement, yet either way the CLECs are still, disadvantaged by not having complete data. An incomplete</p>

Florida Public Service Commission

SEEM Non-Technical Matrix

Row #	Proposed Change	BST Reasoning	CLEC Response
		transmittal of payments is based on the first relevant business day based on standard business practices.	report may even meet the reposting criteria and still not get reposted, thus incurring no penalty, CLECs can agree with the payment terms, but would prefer the modified language to be as follows: or the first business day thereafter, "when the 15 th falls on a non-business day."
6	Reporting 2.9: BellSouth will provide documentation of late and incomplete occurrences during the reporting month that the data is posted to the website.	Language is applicable to performance measurement data posting as required by the SQM only and not SEEM.	> CLECs DISAGREE, CLECs disagree that applies only to SEEM. Requirement is currently included in the SEEM Administrative Plan. CLECs are entitled to information about inaccurate and late SEEM reports as well as SQM reports. If BellSouth does not provide the documentation, CLECs have no way of being noticed that the report's content were incomplete. The omission may not be visibly noticeable.
7	Review of Measurements and Enforcement Mechanisms 3.1: BellSouth will participate in six month annual review cycles starting six months after one year from the date of the Commission order.	The review process lasts for several months and a series of six-month review cycles is not feasible. Therefore, BellSouth propose an annual review cycle, which may be more manageable for all parties involved.	> CLECs AGREE, with the following addition. Any party may petition for a review if special problems result from the last Order to commence all or a partial review before the annual review but no sooner than six months after the last Order.
8	Modification to Measures Review of Measurements and Enforcement Mechanisms 3.2 BellSouth and the ALECs shall file any proposed revisions to the SEEM plan one month prior to the beginning of each review period.	Unnecessary because Commission or Staff will establish schedule.	> CLECs DISAGREE. Given the limited CLEC resources, this entry helps to facilitate required planning to ensure that the comments are prepared in a timely manner.
9	A life line to Measures Review of Measurements and Enforcement Mechanisms 3.3 From time to time, BellSouth may be ordered by the Florida Service Commission to modify or amend the SQMs or SEEMs. Nothing will preclude any party from participating in any proceeding involving BellSouth's SQMs or SEEMs from	Superfluous	> CLECs DISAGREE. This language is essential. This language provides the Staff with the flexibility to exercise its

Florida Public Service Commission

SEEM Non-Technical Matrix

Row #	Proposed Change	BST Reasoning	CLEC Response
	advocating that those measures be modified.		authority to recommend changes outside the proposed annual review process such as when BellSouth's performance dictates.
10	Enforcement Mechanisms Definitions 4.1.1 <i>Enforcement Measurement Elements</i> - performance measurements identified as SEEM measurements within the SEEM in this pPlan.	Correction to reflect removal of SEEM submetric identification from SQM.	> CLECs DISAGREE. CLECs need clarification and do not understand the proposed change.
11	Enforcement Mechanisms Definitions 4.1.2 <i>Enforcement Measurement Benchmark compliance</i> - competitive level of performance established by the Commission used to evaluate the performance of BellSouth and each ALEC for CLECs for penalties where no analogous retail process , product or service is feasible.	Clarification and correction	CLECS AGREE, if BellSouth leaves in "established by the Coinmission".
12	Enforcement Mechanisms Definitions 4.1.3 <i>Enforcement Measurement rRetail aAnalog cCompliance</i> - comparing performance levels provided to BellSouth retail customers with performance levels provided by BellSouth to the <u>CLEC ALEC</u> customer for penalties <u>measures</u> where retail analogs <u>apply</u> .	Clarification and correction.	> CLECS AGREE. >
13	Enforcement Mechanisms Definitions 4.1.4 <i>Test Statistic and Balancing Critical Value</i> - means by which enforcement will be determined using statistically valid equations. The Test Statistic and Balancing Critical Value properties are set forth in Appendix C, incorporated herein by this referenceD, Statistical Formulas and Technical Description.	Correction.	> CLECS AGREE.
14	Enforcement Mechanisms Definitions Section 4.1.5: Cell - ...all BellSouth retail ISDN (POTS) services , for residential customers, ...	Clarification and Correction	CLECs DISAGREE. This change does not represent a clarification or correction. ISDN does represent a different cell level of disaggregation.
15	Enforcement Mechanisms Definitions 4.1.8 <i>Tier-2 Enforcement Mechanisms</i> - assessments paid directly to the Florida Public Service Commission or its designee. Tier 2 Enforcement Mechanisms are triggered by three consecutive monthly failures in Tier 2 enforcement measurement elements in which BellSouth performance is out of compliance or does not meet the benchmarks for the aggregate of all <u>CLEC ALEC</u> data as calculated by BellSouth for a particular Tier-2 Enforcement Measurement Element.	Clarification and correction.	> CLECS DISAGREE. The proposed change adds confusion to the definition and does not delineate the fact that compliance is determined at the submetric level, CLECS recommend replacing deleted language with " of a Tier-2 subnietric"
16	Enforcement Mechanisms Definitions 4.1.9 <i>Affiliate</i> - person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For	This term is not used in applying the methodology of the Plan therefore the definition is not needed,	> CLECS DISAGREE. The definition should be retained such that a common

Florida Public Service Commission

SEEM Non-Technical Matrix

Row #	Proposed Change	BST Reasoning	CLEC Response
	<p>purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10Percent.</p>		<p>understanding, pertaining to designated data, that should be excluded in determining Tier 1 & Tier 2 compliance. The PSC decision stated that, “We will monitor the BellSouth ALEC affiliate performance metrics results provided each month until an assessment can be made of the data’s relevance and significance. At this time, no use should be made of the affiliate data for determining Tier 1 or Tier 2 compliance.” The definition used for affiliate comes from the 1996 Telecommunications Act, which also prohibits the ILECs from discriminating in favor of their affiliates as well as their own retail customers. The definition used for affiliate comes from the 1996 Telecommunications Act, which also prohibits the JLECs from discriminating in favor of their affiliates as well as their own retail customers.</p>
17	<p>Enforcement Mechanisms Definitions 4.1.9: Affected Volume – that proportion of the total impacted CLEC volume or CLEC Aggregate volume for which remedies will be paid.</p>	<p>New definition required for operation of proposed transaction-based remedy mechanism.</p>	<p>> CLECs DISAGREE. CLECs oppose a transaction based plan. See technical matrix to be filed on November 15 for more information, Further, the use of the word “proportion” is inappropriate, and the word “quantity” should be used instead.</p>
18	<p>Enforcement Mechanisms Definitions 4.1.10 Parity Gap – refers to the incremental departure from a compliant-level of service. This is also referred to as “diff” in Appendix D, Statistical Formulas and Technical Description.</p>	<p>New definition required for operation of proposed transaction-based remedy mechanism.</p>	<p>CLECs DISAGREE to inclusion of the proposed definition given that there is no mention of “parity gap” in the proposed plan.</p>
19	<p>Enforcement Mechanisms Application 4.2.1 The application of the Tier1- and Tier-2 Enforcement Mechanisms does not foreclose</p>	<p>Correction.</p>	<p>> CLECs AGREE.</p>

Florida Public Service Commission

SEEM Non-Technical Matrix

Row #	Proposed Change	BST Reasoning	CLEC Response
20	<p>other legal and regulatory claims and remedies available to each <u>CLEC</u>.</p> <p>Enforcement Mechanisms Application 4.2.2: ... performance and the payment of any Tier-1 or Tier-2 Enforcement Mechanisms shall not be used as evidence that BellSouth has not complied with or has violated any state or federal law or regulation. <u>The payment of any Tier-1 Enforcement Mechanism to a CLEC shall be credited against any liability associated with or related to BellSouth's service performance.</u></p> <p><u>It is not the intent of the Parties that BellSouth be liable for both Tier-2 Enforcement Mechanisms and any other assessments or sanctions imposed by the Commission. CLECs will not oppose any effort by BellSouth to set off Tier-2 Enforcement Mechanisms from any assessment imposed by the Commission.</u></p> <p><u>The Enforcement Mechanisms contained in this Plan have been provided by BellSouth on a voluntary basis in order to maintain compliance between BellSouth and each CLEC. As a result, CLECs may not use the existence of this section or any payments of any Tier-1 or Tier-2 Enforcement Mechanisms under this section as evidence that BellSouth has not complied with or has violated any state or federal law or regulation.</u></p>	<p>These changes are to avoid situations where the CLECs are paid multiple times for problems associated with the same transaction or occurrence. Certainly the purpose of plans like the SEEM plan is not to unduly penalize BellSouth and unjustly enrich the CLECs.</p> <p>Similarly, Tier-2 penalties, which are paid to the Commission, should not represent dual assessments against BellSouth for the same performance related problems.</p> <p>Clarification to remove potential controversy about whether the proposed SEEM can be mandated.</p>	<p>➤ CLECs DISAGREE</p> <p>➤ This change is unnecessary. Moreover, what is suggested violates public policy. The SEEM payments are not related or connected to civil damages; they are a penalty imposed by the regulatory agency to deter anti-competitive behavior, To allow such penalty payments to be offset against civil damages is void and against public policy.</p> <p>➤ "Any liability associated with or related to BellSouth's service performance" pertains to civil damages, and this Commission does not have the jurisdiction to limit in advance any remedies available to a CLEC in a judicial proceeding against BellSouth.</p> <p>➤ The proposed set off of Tier-2 Enforcement Mechanisms is inappropriate for the same reasons. BellSouth's desire to dilute the deterrent effect of these penalty payments cannot be sanctioned.</p> <p>➤ This addition to address a "potential controversy" is unnecessary and indeed provokes that dispute. It is an inaccurate statement and accordingly should not be included.</p> <p>The FL PSC also has previously ruled against such an offset when BellSouth tried with Supra Communications and Information Systems, Inc.: "In re</p>

Florida Public Service Commission

SEEM Non-Technical Matrix

Row #	Proposed Change	BST Reasoning	CLEC Response
			<p>:Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (BellSouth track) Docket No. 000121A-TP Order No. PSC-02-1082-FOF-TP > Issued: August 8, 2002 > The FL PSC found that “Allowing BellSouth to offset would defeat the self-effectuating nature of the Plan... The most effective way for BellSouth to avoid payments to Supra during resolution of the billing dispute is by ensuring that it meets all its metrics”.</p>
21	<p>Enforcement Mechanisms Methodology 4.3.1.1 All OCNs and ACNAs for individual CLECs ALECs will be consolidated for purposes of calculating transaction measure-based failures.</p>	<p>Transaction-based plan rather than a measure-based plan is proposed.</p>	<p>> CLECs DISAGREE. CLECs oppose a transaction based plan. See Row 1 of Technical Matrix to be filed on November 15.</p>
22	<p>Enforcement Mechanisms Methodology 4.3.1.2 When a measurement has five or more transactions for the CLEC ALEC, calculations will be performed to determine remedies according to the methodology described in the remainder of the document.</p>	<p>Correction.</p>	<p>> CLECs AGREE.</p>
23	<p>Enforcement Mechanisms Methodology 4.3.2 Tier-2 Enforcement Mechanisms will be triggered by BellSouth's failure to achieve applicable Enforcement Measurement Compliance or Enforcement Measurement Benchmarks for the State of Florida for given Enforcement Measurement Elements for three consecutive <i>months</i>. The based upon the method of calculation is set forth in Appendix D, incorporated herein by this reference. <u>Statistical Formulas and Technical Description.</u></p>	<p>Clarification,</p>	<p>> CLECs AGREE.</p>
24	<p>Enforcement Mechanisms Methodology 4.3.2.1 Tier- 2 Enforcement Mechanisms apply, for an aggregate of all CLEC ALEC data generated by BellSouth, on a per measurement transaction basis for a particular Enforcement Measurement Element each Enforcement Mechanism Element for which BellSouth has reported <u>non-compliance</u>.</p>	<p><i>See the discussion</i> for section 4.3.1.3 above concerning the recommended change for Tier 1 from per-measure to a per-transaction based plan.</p>	<p>> CLECs DISAGREE, 9 Issue of transaction basis vs. measurement to be discussed in technical matrix 'response. Question for BellSouth, What is the difference between "particular" and "each"?</p>

Florida Public Service Commission

SEEM Non-Technical Matrix

Row #	Proposed Change	BST Reasoning	CLEC Response
25	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts</p> <p>4.4.1 If BellSouth performance triggers an obligation to pay Tier-1 Enforcement Mechanisms to an CLECALEC or an obligation to remit Tier-2 Enforcement Mechanisms to the Commission or its designee, BellSouth shall make payment in the, required amount by the 15th day of the second month following the month for which disparate treatment was incurred on the day upon which the final validated SEEM reports are posted on the Performance Measurements Reports website as set forth in <u>Section 2.4 above.</u></p>	<p>Clarification and to ensure consistency.</p>	<p>CLECs AGREE, subject to resolution of concerns raised in response to Section 2.4.</p>
26	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts</p> <p>4.4.2 For each day after the due date that BellSouth fails to pay an CLECALEC the required amount, BellSouth will pay the CLECALEC 6% simple interest per annum.</p>	<p>Correction.</p>	<p>> CLECs AGREE.</p>
27	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts</p> <p>4.4.3 For each day after the due date that BellSouth fails to pay the Tier-2 Enforcement Mechanisms, BellSouth will pay the Commission an additional \$1,000 per day.</p>		<p>> CLECs AGREE.</p>
28	<p>Enforcement Mechanisms Payment of Tier- 1 and Tier-2 Amounts</p> <p>4.4.4: ...within sixty (60) days after the payment due date of the performance measurement report for which the obligation arose.</p> <p>...within thirty (30) days after its findings along with 6Percent% 6Percent% simple interest per annum. However, the ALEC shall be responsible for all administrative costs associated with resolution of disputes that result in no actual payment. Administrative costs are those reasonable costs incurred in the resolution of the disputed matter. Such costs would include, but not be limited to, postage, travel and lodging, communication expenses, and legal costs. If BellSouth and the ALEC have exhausted good faith negotiations and are still unable to reach a mutually agreeable settlement pertaining to the amount disputed, the Commission will settle the dispute. If Commission intervention is required, a mediated resolution will be pursued.</p>	<p>Clarification and correction.</p>	<p>9 CLECs DISAGREE.</p> <p>1. Elimination of “payment due” did not require clarification. The PSC Order reflected that the claim should be submitted 60 days after the payment due date.</p> <p>2. Addition of language “of the performance measurement report for which the obligation arose” basically reduces the time allotted to CLECs for amassing the level of details to substantiate their claims.</p> <p>3. BellSouth provides <i>no</i> substantiation for deletion of the remaining language. Deletion of this language limits CLEC escalation options.</p>
29	<p>4.4.5 At the end of each calendar year, an independent accounting firm, mutually agreeable to the Florida Public Service Commission and BellSouth, shall certify that all penalties under that the results of all penalties under Tier 1 and Tier 2 Enforcement Mechanisms were paid and accounted for in accordance with Generally Accepted Account Principles (GAAP). These annual audits shall be performed based upon audited data of BellSouth’s performance measurements.</p>	<p>extent necessary by revised audit provisions. The Audit Policy is provided herein as section 4.8.</p> <p>Correct oversight by adding procedure to address clarification requests</p>	<p>> CLECs DISAGREE.</p> <p>1. First, the CLECs do not agree with the proposed audit policy, Second, the Audit Policy, as described in section 4.8, makes no mention of the Audit Policy including tasks represented in the anguage marked for deletion.</p>

Florida Public Service Commission

SEEM Non-Technical Matrix

Row #	Proposed Change	BST Reasoning	CLEC Response
	<p>For Tier-2 Enforcement Mechanisms, if the Commission requests clarification of an amount paid, a written claim shall be submitted to BellSouth within sixty (60) days after the date of the performance measurement report for which the obligation arose. BellSouth shall investigate all claims and provide the Commission written findings within thirty (30) days after receipt of the claim. If BellSouth determines the Commission is owed additional amounts, BellSouth shall pay such additional amounts within thirty (30) days after its findings along with 6% simple interest per annum.</p>	<p>for Tier 2 by the Commission, which already exists for Tier 1 for CLECs.</p>	<p>CLECS AGREE in Part and Disagree in Part. CLECs agree that Tier II claims should be included. However, CLECs object to the specific language— See Item 2 in Row 28 above.,</p>
30	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts 4.4.6: BellSouth may set off any SEEM payments to a CLEC against undisputed amounts owed by a CLEC to BellSouth pursuant to the Interconnection Agreement between the parties which have not been paid to BellSouth within ninety (90) days past the Bill Due Date as set forth in the Billing Attachment of the Interconnection Agreement.</p>	<p>Prevent unreasonable situation where BellSouth is paying SEEM to a CLEC who is not paying an undisputed bill.</p>	<p>> CLECs DISAGREE. This is similar to what is proposed in Section 4.2.2, in that BellSouth is attempting to collapse all SEEM payments into offsets against its other obligations and liabilities. This must be rejected.. Here, it is BellSouth's discretion as to whether the amount is "undisputed" and has "not been paid" and there is no opportunity for CLEC input, BellSouth alone is the arbiter of whether the set off is appropriate, a situation ripe for the abuse of anti-competitive activity. Thus, the concept is inappropriate (SEEM payments are penalties which cannot be treated as a civil damage set off) and its proposed implementation is dangerous (BellSouth alone as the decision maker promotes anti-competitive behavior BellSouth alone is the arbiter of whether the set off is appropriate, a situation ripe for the abuse of anti-competitive activity. Thus, the concept is inappropriate (SEEM payments are penalties which cannot be treated as a civil damage set off) and its proposed implementation is dangerous BellSouth alone as the decision</p>

Florida Public Service Commission

SEEM Non-Technical Matrix

Row #	Proposed Change	BST Reasoning	CLEC Response
			maker promotes anti-competitive behavior) Also see response to Row 20.
31	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts</p> <p><u>4.4.7 Any adjustments for underpayment or overpayment of calculated Tier 1 and Tier 2 remedies will be made consistent with the terms of BellSouth's Policy On Reposting Of Performance Data and Recalculation of SEEM Payments, as set forth in Appendix G of this document.</u></p>	<p>This provision is provided to formalize the incorporation of the Reposting Policy.</p>	<p>9 CLECs DISAGREE. There are circumstances, other than those triggered by the Reposting Policy that could necessitate the issuance of an adjustment. Adjustments, unrelated to the Reposting Policy, should not be prohibited due to this proposed language. Additionally, the Reposting Policy is already formalized by being an existing section of the SEEM plan.</p>
32	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts</p> <p><u>4.4.8 Any adjustments for underpayments will be made in the next month's payment cycle after the recalculation is made. The final current month PARIS reports will reflect the final paid dollars, including adjustments for prior months where applicable. Questions regarding the adjustments should be made in accordance with the normal process used to address CLEC questions related to SEEM payments.</u></p>	<p>Clarify by stating current practice used to make adjustments and address CLEC questions.</p>	<p>> CLECs AGREE, WITH CAVEAT. CLECs agree that adjustments should be included in the plan. However, the current and proposed process for handling adjustment questions is currently ineffective. CLECs have consistently not been able to acquire the level of detail to understand or gain knowledge of the source of adjustments by using the "normal process used to address CLEC questions related to SEEM payments." Also see CLEC Coalition Filings of August 18,2004 and October 11, 2004 on this issue.</p>
33	<p>Enforcement Mechanisms Limitations of Liability</p> <p>4.5.1 BellSouth's total liability for the payment of Tier 1 and Tier 2 Enforcement Mechanisms shall be collectively and absolutely capped at 39% of net revenues in Florida, based upon the most recently reported ARMIS data.</p>	<p>Addressed in new Section 4.7 entitled "Enforcement Mechanism Cap."</p>	<p>> CLECs DISAGREE. BellSouth has provided no substantiation for reducing the "Enforcement Mechanism Cap." BellSouth has provided no rationale that would cause a different determination than the 39% ordered by this Commission</p>

Florida Public Service Commission

SEEM Non-Technical Matrix

Row #	Proposed Change	BST Reasoning	CLEC Response
			and consistent with the FCC's guidance on effective enforcement mechanisms in its first Communications Act Section 271 approval for Verizon (then Bell Atlantic's) in-region long distance entry.
34	Enforcement Mechanisms Limitation of Liability 4.5.2: <u>BellSouth will not be obligated to pay Tier-1 or Tier-2 ... if such noncompliance results from ... failure to follow established and documented procedures.</u>	Clarifies current provisions by stating additional specific instances where BellSouth should not be obligated to pay SEEM.	<p>➤ CLECs DISAGREE.</p> <p>The language, "failure to follow established and documented procedures", is very broad. Therefore, the rationale provided by BellSouth does not address the proposed change.</p>
35	Enforcement Mechanisms Limitations of Liability 4.5.3 BellSouth shall not be obligated for Tier 1 or Tier 2 Enforcement Mechanisms for noncompliance with a performance measure if such non-compliance was the result of an act or omission by a ALEC that was in bad faith	Covered in revised Section 4.5.2.	<p>➤ CLECs AGREE.</p>
36	Enforcement Mechanisms Limitations of Liability 4.5.4: <u>... a Force Majeure event (as defined in the most recent version of BellSouth's standard Interconnection Agreement)</u>	Clarification by identifying the specific source of the definition of a Force Majeure event	<p>➤ CLECS DISAGREE</p> <p>9 This should be defined in the Plan, not in an external document created by BellSouth, CLECs oppose tying the definition of Force Majeure to an unarbitrated agreement. The definition should be included in the SEEM and agreed on by CLECs and the Commission for clarity to all parties.</p>
37	Enforcement Mechanisms Affiliate Reporting 4.6 Affiliate Reporting -Change of Law	This is a new section that uses the section number previously designated for Affiliate Reporting.	<p>➤ CLECs DISAGREE. This change is unnecessary, as set forth in the comments in the next Response.</p>
38	Enforcement Mechanisms Affiliate Reporting -Change of Law 4.6.1 <u>Upon a particular Commission's issuance of an Order pertaining to Performance Measurements or Remedy Plans in a proceeding expressly applicable to all CLECs, BellSouth shall implement such performance measures and remedy plans covering its performance for the CLECs, as well as any changes to those plans ordered by the</u>	The Affiliate Reporting section is eliminated because it is irrelevant for SEEM. That is, this provision is unnecessary to determine whether BellSouth provides nondiscriminatory access. The standards for nondiscriminatory access are defined for	<p>➤ CLECs DISAGREE.</p> <p>This change is unnecessary and should be rejected. First, it apparently would an Order from another state commission to be implemented in Florida. Second, it would allow BellSouth to</p>

Florida Public Service Commission

SEEM Non-Technical Matrix

Row #	Proposed Change	BST Reasoning	CLEC Response
	<p>Commission, on the date specified by the Commission. If a change of law relieves BellSouth of the obligation to provide any UNE or UNE combination pursuant to Section 251 of the Act, then upon providing the Commission with 30 days written notice, BellSouth will cease reporting data or paving remedies in accordance with the change of law. Performance Measurements and remedy plans that have been ordered by the Commission can currently be accessed via the Internet at http://pmap.bellsouth.com. Should there be any difference between the performance measure and remedy plans on BellSouth's website and the plans the Commission has approved as filed in compliance with its orders, the Commission-approved compliance plan will supersede as of its effective date.</p>	<p>each metric in the SQM.</p> <p>Adds specific provision to address how changes of law will be handled in SEEM. This provision represents a reasonable balance between providing adequate notice that payments will cease with prompt relief for BellSouth to discontinue payments that should no longer be required.</p>	<p>unilaterally cease reporting data or paying remedies, which is inappropriate and would promote anti-competitive activity. Third, it misconstrues the law. Separate from its obligations under Section 251, BellSouth continues to be obligated to provide non-discriminatory access to certain elements and services under Section 271 of the Telecommunications Act of 1996 and Florida statutes. To ensure BellSouth's compliance with these requirements of non-discriminatory access, performance measures such as those implemented by this Commission are crucial. Further, excusing BellSouth from providing non-discriminatory access to these wholesale elements and services is against the public interest and the purpose of service quality measurements. Also see CLEC Coalition's Issues List and Comments filed on September 13, 2004.</p> <p>> Further, the Commission may deem certain wholesale services to be critical to CLECs that are not designated as UNEs as it has with special access and may chose to impose remedies. Although Florida has not applied remedies to special access measures, it is not barred from doing so at the 8th Circuit Court of Appeals has determined that the Minnesota</p>

Row #	Proposed Change	BST Reasoning	CLEC Response
			<p>PUC's inclusion of a special access performance enforcement plan is not preempted by the FCC even though services may be classified as interstate</p>
40	<p>Affiliate Reporting—Enforcement Mechanism Cap BellSouth shall provide monthly results for each metric for each BellSouth ALEC affiliate; however, only the Florida Public Service Commission shall be provided the number of transactions or observations for BellSouth ALEC affiliates. Further, BellSouth shall inform the Commission of any changes regarding non ALEC affiliates' use of its OSS databases, systems, and interfaces. 4.7 Add Section: <u>Enforcement Mechanism Cap</u></p>	<p>Separates provisions related to the Enforcement Mechanism Cap into its own section. Formerly, this information was reflected in section 4.5.1.</p>	<p>➤ CLECs DISAGREE.</p> <p>BellSouth's reasoning does not address the deletion of the Affiliate Reporting section. Therefore, no rationale has been stated to revisit the Commission's decision on Affiliate Reporting. Further, Sec. 251 (c) (2) (C) says incumbents have the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network— "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."</p> <p>Also see response to Row 33 above regarding enforcement cap.</p>
41	<p><u>Audits</u> 4.8 – 4.8.1: Add new section: <u>Audits</u></p>	<p>Incorporates a more thorough audit plan into SEEM. Having all parties share in the cost provides equal incentive to limit the scope of the audit to meaningful activities.</p>	<p>➤ CLECs DISAGREE, BellSouth has not provided any rationale to justify changing auditing provisions ordered by this Commission. BellSouth should continue to audit its PMQAP and the performance data.</p> <p>Additionally, BellSouth is obligated to provide compliant</p>

Row #	Proposed Change	BS1 Reasoning	CLEC Response
			<p>performance and uses its performance reporting as evidence of that compliant performance. Therefore, BellSouth should continue to incur the cost of the audit since it's required for BellSouth's</p>
42	<p>Dispute Resolution 4.74.9 Notwithstanding any other provision of the Interconnection Agreement between BellSouth and each CLECALEC, any dispute regarding BellSouth's performance or obligations pursuant this Plan shall be resolved by the Commission.</p>		