Legal Department

Robert A. Culpepper
General Attorney

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

December 10, 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. 000121A-TP
In Re: Investigation into the establishment of operations support systems permanent incumbent local exchange Telecommunications companies

Dear Ms. Bayó:

As requested by the Commission Staff, please find enclosed for filing BellSouth's comments regarding the SEEM fee schedule. A copy of the same is being served on all parties of record.

Sincerely,

Robert A. Culpepper

Enclosures

cc: All parties of record
Marshall M. Criser, III
Nancy B. White
R. Douglas Lackey

CERTIFICATE OF SERVICE
Docket No. 000121A-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 10th day of December, 2004 to the following:

Adam Teitzman
Jerry Hallenstein
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6175
Fax. No. (850) 413-6250
ateitzma@psc.state.fl.us
jhallens@psc.state.fl.us

Tracy W. Hatch
AT&T
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
Tel. No. (850) 425-6360
Fax. No. (850) 425-6361
thatch@att.com

Sonia Daniels
AT&T
1230 Peachtree Street
Suite 400
Atlanta, GA 30309
Tel. No. (404) 810-8488
Fax. No. (281) 664-9791
soniadaniels@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
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301
Tel. No. (850) 219-1008
donna.mcnulty@mci.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
Gene Watkins (+)
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
jbell@covad.com
gwatkins@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

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

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

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

Robert A. Culpepper

(+) Signed Protective Agreement

#502166

REQUEST: Parties are to submit alternatives to the BellSouth proposal for determining which fee schedule to use under the 'trip wire.'

RESPONSE: BellSouth's response is attached.

TRIPWIRE OPTIONS FOR SELECTING SEEM FEE SCHEDULE TO APPLY

Introduction

The Florida PSC Staff requested that BellSouth look at options to incorporate its tripwire concept into the SEEM plan penalty calculation methodology. In response to that request BellSouth has provided three options for consideration. These three options are discussed later in this document, however, BellSouth believes that it is useful, to briefly recap BellSouth's primary reasons for making its SEEM proposal, which incorporated the tripwire feature.

BellSouth, in its petition filed with the Commission on May 12, 2004, expressed its concern, among other things, with the present functioning of the SEEM plan. In particular, BellSouth provided several examples where, under the design of the current plan, huge penalties were paid for very small differences in performance between retail and CLEC results. Those examples merely highlighted symptoms of a much bigger problem. Accordingly, in order to correct this problem in the SEEM plan, BellSouth proposed to modify the plan to make remedy payments more in line with performance and with a more rationally-based fee.

As part of its proposal, BellSouth recommended a shift from the current measurement-based penalty calculation approach to a transaction-based approach. In conjunction with this change in the penalty calculation methodology, and as an important component of it, BellSouth provided an approach that used three penalty assessment categories: a standard performance fee schedule, reduced from the current excessively high schedule, which applies if BellSouth remains within a reasonable range of its current performance; a low performance fee schedule that applies if BellSouth's performance drops below a reasonable range of its current performance, wherein penalties are significantly increased; an incentive, which is actually not a fee schedule, wherein if BellSouth's performance is above the objective range around BellSouth's current performance no penalties are paid. The device used to determine which fee schedule applies, or if the penalty avoidance trigger is reached, is referred to as the "tripwire" feature.

The tripwire provision serves as the means of implementing more reasonable penalty assessment levels as long as BellSouth performance remains in the current range, while at the same time establishing an anti-backsliding mechanism, of substantially higher SEEM payments if performance drops materially. This is important for at least two reasons. The first reason is because the FCC has consistently stated that the role of enforcement plans such as SEEM is to provide another mechanism designed to deter backsliding in performance. Second, and equally important, is the fact that the SEEM is not the exclusive remedy for deterring backsliding. That is, any CLEC that believes that it has sustained performance-related damages that exceed SEEM payments may exercise its legal and contractual rights to recover such damages, and such actions also as deterrents. Also, failure to provide the CLECs with a meaningful opportunity to compete would mean that they would look for an alternative method to providing service to their customers and BellSouth would loose their business.

The distinguishing feature of the SEEM plan is that it is automatic. But, the tradeoff is that BellSouth pays penalties even though it is not backsliding. Moreover, there is no requirement to show that BellSouth's performance caused even the slightest harm to CLECs. The facts show that there has been no backsliding under the current SEEM plan, yet penalty payments are extremely high. Although SEEM is intended to generate penalties only when a material performance deficiency occurs, the existing plan requires BellSouth to provide CLECs better service in the aggregate than it provides to retail customers in order to eliminate penalty payments. This problem occurs because the performance for each individual CLEC is compared to BellSouth's average performance across a geographic area. It is impractical to manage performance in such a manner that performance for each CLEC is exactly equal to the average retail performance, as a consequence aggregate performance for the CLECs must exceed retail performance in order to eliminate payments. This condition is contrary to the intent of SEEM. Without the proposed criteria, this flaw would continue in the proposed plan.

The focus of this document is the tripwire feature. In particular, BellSouth provides three options for incorporating a tripwire feature into the proposed SEEM plan per Staff's request. The three options that BellSouth would like the Staff to consider are discussed below in order of BellSouth's preference.

Option 1

This is BellSouth's initial tripwire proposal. Under this approach, BellSouth would first calculate the average percentage of SQM submetrics met for the twelve months preceding implementation of the Florida Public Service Commission's order in this docket. For example, if BellSouth met the performance criteria for 81% of the SQM submetrics, on average, for this 12-month period, 81% would serve as the starting point for the baseline range to establish whether there is any backsliding. BellSouth would then determine three standard deviations around the 81% performance level based on the percentage of submetrics met. This would define the baseline range necessary to make penalty payments according to the Standard Fee Schedule included in BellSouth's SEEM proposal. Each month, an assessment is made to determine which of three SEEM penalty payment options (fee schedules) would apply.

First, for the "Standard Fee Schedule", amounts are used when BellSouth's overall performance in a given month remains within three standard deviations of a baseline performance level. This baseline level is the average of the percent of submetrics met each month for the 12 consecutive months ending prior to the month a Commission order adopting the plan goes into effect. These averages will be taken from across all reporting domains. These domains are: OSS/Pre-ordering, Ordering, Provisioning, Maintenance and Repair, LNP, Billing, Interconnection Trunks, Collocation, and Service Order Accuracy. In the example, used above 81% was the baseline performance level, so performance within +/- three standard deviations of 81% would mean any payments made across all domains would apply the Standard Fee Schedule. The Standard Fee Schedule is less punitive than the existing fee schedule and is more rationally based, deriving from the approach taken in commercial agreements in other industries.

Second, should BellSouth's performance, as measured by the percent of submetrics met in the current data month, fall below three standard deviations from the established baseline level of performance, the "Low Performance Fee Schedule" will be utilized for that month for both Tier 1 and Tier 2, across all domains. Additionally, if BellSouth's performance for a given month triggers the Low Performance Fee Schedule, for the following proposed Tier-2 only measures, Tier-1 penalties would also apply: Firm Order Confirmation and Reject Response Completeness, LNP-Percent Out of Service < 60 Minutes, LNP-Percent of Time BellSouth Applies the 10-Digit Trigger Prior to the LNP Order Due Date, LNP Disconnect Timeliness (Non-Trigger), Acknowledgement Message Completeness, and Percent Flow-Through Service Requests. The Low Performance Fee Schedule is more comparable to the existing fee schedule if it were adjusted to function according to an analogous transaction-based fee schedule. BellSouth believes that penalties should be paid at this high level only if there is evidence of backsliding, which is based on material differences in performance between CLECs' results and retail results.

Third, if BellSouth's performance in the current month should exceed the baseline level by three standard deviations, no Tier 1 payment will apply for any CLEC in that month. BellSouth believes that this is a viable option to encourage performance levels beyond what is legally mandated. In the current environment, BellSouth's reward for improving performance is for the standard to be raised. Consequently, BellSouth's penalties do not go down when its performance levels increase because BellSouth continues to chase a moving target. This would tend to discourage improvement rather than encourage improvement. BellSouth believes that the SEEM plan should contain positive incentives as well as negative incentives.

BellSouth believes this option is most appropriate for several reasons, as already discussed, but this option also has the following positive characteristics:

- Very stable results. It has a large base of data and it is based on CLEC aggregate results. As a result there should be a minimum of random monthly fluctuations. This approach is also less prone to significant influences of seasonal differences than a mechanism that has more disaggregation or more components, with fewer observations per component.

- Directly related to purpose of plan. By establishing a baseline performance threshold based on current performance, which is at or above the level that earned 271 approval, this approach is directly related to the overarching intent of the SEEM plan – which is to prevent backsliding from the 271 approval performance level.

- It is applicable to both Tier1 and Tier 2. The high, low and standard performance level assessments are made at the CLEC aggregate level, but the determination of whether to use the high, low or standard performance fee schedules applies whether payments are made at the Tier 1 or Tier 2 level.

- Accommodates both analogs and benchmarks. The method of determining which fee schedule to use applies easily to measures using retail analogs and measures using benchmark standards. In either case, the level of SEEM payments is tied to a rational grouping of submetrics by meaningful performance categories.

- Provide for deterrents and incentives. This methodology provides deterrents to backsliding by imposing severe penalties for poor performance. Importantly, it also encourages performance beyond the legal requirement by providing incentives for good performance.

Option 2

This option is a modification to BellSouth's original tripwire proposal. In reviewing BellSouth's initial proposal, Staff expressed two primary concerns with the proposal. The first concern was that determination of the tripwire was based on SQM submetrics rather than SEEM submetrics. Staff's second primary concern was that the determination of whether BellSouth would pay according to a low fee schedule, high fee schedule, or no fee schedule, was based on overall statewide aggregate data, *i.e.,* determining whether the percentage of total submetrics that BellSouth passes is within a base range, for example within 3 standard deviations of 81% in the example provided above. In particular, Staff was concerned that the data used to set the tripwire were too aggregated and did not look at, for example, performance by domain (*e.g.* Ordering, Provisioning, Maintenance & Repair, *etc.*).

Under this option, BellSouth made changes to its original proposal to address the concerns raised by Staff. First, the data used to set the tripwire are based on SEEM data rather than SQM data. Second, a separate base percentage is set for different submetric categories, rather than using one percentage for all submetrics together. Specifically, BellSouth proposes to establish four measurement categories using SEEM measures. Namely, measurements would be classified according to two general process domains - Provisioning (*e.g.* Pre-ordering, Ordering, Provisioning) and Post-Provisioning (*e.g.* Maintenance & Repair, Billing) and two modes of entry - Resale and UNE.

The number of SEEM submetrics at the aggregate level does not constitute a large enough starting base necessary to effectively divide these submetrics into four categories. This is because in dividing these submetrics into four categories there would not be enough submetrics per category to allow for stable results. This would be the case both for purposes of establishing a baseline per category and for comparing the month-to-month performance results. Therefore, BellSouth proposes to either determine the baseline percentage, by measurement category, using either SEEM CLEC/submetrics combinations or cells to calculate the baseline percentage of opportunities for which

BellSouth made the performance standard. This would serve as the starting point around which a range of three standard deviations would be calculated and established to determine the appropriate fee schedule for penalty payment purposes.

To illustrate, under this option, the four measurements categories would be: (1) Resale Provisioning, (2) Resale Post-Provisioning, (3) UNE Provisioning, and (4) UNE Post-Provisioning. Now suppose that there are 100 CLECs in Florida and 20 submetrics for the UNE Provisioning measurement category. This means that there are 20 X 100 or 2000 opportunities to meet the performance criteria. Under this option, if BellSouth passes 1800 of the 2000 performance tests on average for the 12-month period preceding the issuance of an order by the Florida Commission, the baseline percentage for the UNE Provisioning category would be 90% (1800/2000).

Thus, on a going forward basis, the baseline performance range, which would allow BellSouth to pay penalties based on the SEEM proposed Standard Performance Fee Schedule would be performance levels (*i.e.,* percentage of submetrics met) that are within three standard deviations of 90% for the UNE Provisioning category. If BellSouth's performance were below three standard deviations from 90% SEEM payments would be made according to the Low Performance Fee Schedule. Finally, if BellSouth's performance is above three standard deviations from the 90%, SEEM payments would be made according to the High Performance Fee Schedule.

It should be noted that the baseline percentage would be calculated in a similar way for the other three categories, but would not necessarily be the same as the level calculated for the UNE Provisioning category. For example, it might turn out that the baseline percentage for the Resale Post-Provisioning category is 88%, or 92% for that matter, rather than the 90% calculated for the UNE Provisioning category.

This approach addresses the concerns of the Staff and retains the advantages of BellSouth's original proposal. Specifically, this option has the following positive characteristics:

- <u>Very stable results</u>. It has a large base of data and it is based on CLEC aggregate results. As a result there should be a minimum of random monthly fluctuations. This approach is also less prone to significant influences of seasonal differences than a mechanism that has more disaggregation or more components, with fewer observations per component.

- <u>Directly related to purpose of plan</u>. By establishing a baseline performance threshold based on current performance, which is at or above the level that earned 271 approval, this approach is directly related to the overarching intent of the SEEM plan – which is to prevent backsliding from the 271 approval performance level.

- <u>It is applicable to both Tier1 and Tier 2</u>. The high, low and standard performance level assessments are made at the CLEC aggregate level, but the determination of whether to use the high, low or standard performance fee schedules applies whether payments are made at the Tier 1 and Tier 2 level.

- Accommodates both analogs and benchmarks. The method of determining which fee schedule to use applies easily to measures using retail analogs and measures using benchmark standards. In either case, the level of SEEM payments is tied to a rational grouping of submetrics by meaningful performance categories.

- Provides for deterrents and incentives. This methodology provides deterrents to backsliding by imposing severe penalties for poor performance. Importantly, it also encourages performance beyond the legal requirement by providing incentives for good performance.

Option 3

There are actually two parts to this option, which will be referred to as sub-options 3A and 3B. Both sub-options use Tier 2 aggregate data for determining which fee schedule to use in calculating payments and the determination of which fee schedule to apply is made at the submetric level, rather than the measurement category.

Sub-option 3A: Under sub-option 3A, there are two fee schedules, a Low Fee Schedule and a High Fee Schedule, and are applied to Tier 1 SEEM payments. The applicable fee schedule for Tier 1 SEEM payments is based on performance results, by measure, calculated on a rolling three-month average of Tier 2 aggregate data. This means that each month BellSouth would calculate, by submetric, the average CLEC aggregate three-month results based on the current month and prior two months. This CLEC average result would then be compared to the average BellSouth aggregate result for the same three-month period where retail analogs are involved. If the applicable standard is a benchmark, the CLEC average result would be compared to the benchmark standard. If BellSouth passes at the statewide level for a given measure, any Tier 1 payments required for that measure would be made on the low fee schedule. Conversely, if BellSouth fails at the statewide aggregate level for a measure, Tier 1 payments for that measure would be based on the high fee schedule.

It is appropriate to use a three-month rolling average for making this determination because this would make the assessment more stable and minimize the impact of random occurrences, where a single occurrence could have a huge impact on penalties. Under this approach, however, Tier 2 penalties would have to be paid according to a single fee schedule since the methodology does not readily allow for making distinctions in Tier 2 results for purposes of choosing one fee schedule versus another.

The main benefits to option 3A are as follows:

- Uses SEEM results as the basis for calculation. Option 3A compares Tier 2 CLEC and BellSouth statewide aggregate performance for each SEEM measure where retail analogs are concerned and compares CLEC aggregate Tier 2 SEEM performance data to a benchmark standard where analogs are not used. This ties the fee schedule determinations to data used in the SEEM calculations.

- The applicable fee schedule is determined by measure. Under this approach, each submetric has its own assessment for fee schedule treatment. Thus, in the same month, some measures will be on the high fee schedule and some on the low fee schedule.

- No back casting of results required. The determination of the applicable fee schedule is made each month without the need of establishing a baseline performance range based on 12-months, or some other time interval.

There are also several disadvantages to this approach.

- Results are not tied to backsliding. The central, if not sole, purpose of enforcement plans like the SEEM plan is to prevent backsliding. Because fee schedule determinations in this option are made monthly, without regard to whether backsliding has occurred, BellSouth would be penalized in many cases where it should not be.

- May be subject to seasonal variation. This approach, because it does not use a sufficient time interval, such as 12-months in order to establish a baseline for performance assessments, has no dampening effect for the impact of seasonal variations. Thus, BellSouth may be subject to penalties under the high fee schedule even though the performance is reasonable for the time of year.

- Provides for only two fee schedules. Under BellSouth's initial tripwire proposal, there were three schedules: standard, low and high performance levels. The low performance fee schedule would deter backsliding, but the high performance fee schedule would provide an incentive to significantly improve performance.

- Not clear how to apply to Tier 2. This alternative is geared more specifically towards making Tier 1 payment determinations. It does not readily translate to a Tier 2 application.

Sub-option 3B: This alternative operates much the same as sub-option 3A in that it uses SEEM Tier 2 aggregate data to make fee schedule determinations, and does so for each sub-metric. However, under this approach, three fee schedules are used (High, Medium, and Low). As with sub-option 3A, for submetrics which fail the Truncated z-test, *i.e.*, the aggregate z-score is less than the Balancing Critical Value ("BCV"), based on the Tier 2 aggregate level, three-month rolling average, BellSouth would pay any Tier 1 penalties required according to the High Fee Schedule. In contrast to sub-option 3A, if BellSouth passes the Truncated z-test at the Tier 2 CLEC aggregate level, based on the rolling three-month average, a two-prong test is then employed. First, if the CLEC aggregate z-score is greater than zero, (*i.e.*, the CLECs received better service than BellSouth at the aggregate level) the Low Fee Schedule is used to calculate any Tier 1 payments that are required. Second, if the CLEC aggregate z-score is between zero and the BCV, (*i.e.*, BellSouth's performance is slightly better than the CLECs' performance, but the difference is not statistically significant) any Tier 1 payments are made according to the Medium Fee Schedule.

This approach, Sub-option 3B, has all of the benefits of Sub-option 3A, but does not have the disadvantage of only having two fee schedules. In addition, under both Sub-option 3A and Sub-option 3B, BellSouth can pass the Truncated z-test at the CLEC aggregate level and still pay penalties at the Tier 1 level.

Conclusion

BellSouth continues to believe that its initial tripwire proposal, identified as Option 1 in this document, is the appropriate approach for maintaining anti-backsliding protection without applying an overly punitive mechanism to SEEM penalty assessments. It also provides an incentive for BellSouth to provide the CLECs with better overall performance for their customers. Indeed, Option 1 is most directly tied to the purpose of enforcement plans like the SEEM plan, which is to deter an ILEC from backsliding. Option 1 is best suited because the tripwire approach used (SQM performance metrics met) is based on the criteria used in the 271 approval process, which determined BellSouth's ongoing performance obligation. In an attempt to address Staff's concerns BellSouth has provided several other options for employing a tripwire feature in the SEEM plan. Each of the other options, however, fails to recognize that BellSouth is not backsliding in its performance, and this is a continuing concern for BellSouth. BellSouth does believe, however, that Option 2 is the best alternative to Option 1.