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Sent: Friday, January 21, 2005 3:24 PM
To: Filings@psc.state.fl.us
Cc: Culpepper, Robert; Nancy Sims; Holland, Robyn P; Fatool, Vicki; Slaughter, Brenda ; Linda Hobbs; Bixler, Micheale
Subject: Florida Docket No. 000121A-TP
Importance: High

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

C. BellSouth Telecommunications, Inc.
on behalf of Robert A. Culpepper

D. 30 pages total in PDF format

E. BellSouth Telecommuniations, Inc.'s Comments Regarding Commission Staff's SEEM Strawman Proposal.

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January 21, 2005

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:

Enclosed are BellSouth Telecommunications, Inc.'s Comments Regarding Commission Staff's SEEM Strawman Proposal, which we ask that you file in the captioned docket. A copy of the same is being provided to all parties as reflected in the attached certificate of service.

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 21st day of January, 2005 to the following:

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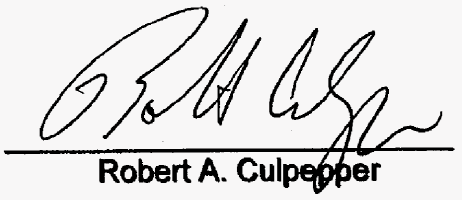

Robert A. Culpepper

(+) Signed Protective Agreement

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (BELLSOUTH TRACK)	)))))	Docket No.: 000121A-TP Filed: January 21, 2005

BELLSOUTH TELECOMMUNICATIONS, INC.'S COMMENTS REGARDING COMMISSION STAFF'S SEEM STRAWMAN PROPOSAL

As requested by the Commission Staff, BellSouth Telecommunications, Inc. ("BellSouth"), herein submits its comments regarding the SEEM Strawman Proposal drafted by the Commission Staff ("Strawman Proposal") attached hereto as Exhibit "A". As an initial matter, BellSouth commends Staff for the tremendous time and effort that Staff has undertaken to create the Strawman Proposal. Further, BellSouth believes that the Strawman Proposal, if modified in the manner suggested below, can be an effective part of an improved SEEM Plan that: (i) contains a more rational and reasonable link between performance and penalties, and (ii) incents continued performance at a level that meets or exceeds the level of service that earned in-region long distance authority pursuant to Section 271 of the Telecommunication of 1996.

I. Any Requirement that Results in BellSouth Paying Penalties for Transactions that Cause the Truncated Z-Score to Fall Between the Balancing Critical Value ("BCV") and 0 is Inconsistent with the Statistical Methodology, Because It Causes BellSouth to Pay Penalties on Transactions that Do Not Reflect Discrimination. Additionally, to Avoid Penalties, this Approach Forces BellSouth to Provide CLECs with Superior Service When Compared to the Level of Service that BellSouth Provides to its Retail Customers.

BellSouth has always expressed a concern with a penalty calculation methodology that required payment for transactions associated with the region between the Balancing Critical Value (BCV) and zero. Instead, BellSouth believes that the proper approach to calculating penalties is to determine how many transactions must be corrected in order to move the truncated z-score back to the BCV. These two different approaches, correcting transactions back to zero versus correcting transactions back to the BCV have been referred to, respectively, as the Parity point approach versus Detection point approach.

Under BellSouth's proposal a "cell correction" approach was introduced which, in short, corrected transactions in each negative cell until the submetric involved was brought into parity based on a comparison of the truncated z-score to the BCV. The number of transactions required to reach the objective level would then be multiplied by the per transaction amount in the fee schedule to establish the penalty payment. The problem that BellSouth has with the Staff's proposal is the objective of correcting cells back to the point where the truncated z-score is equal to zero. This approach causes BellSouth to pay on transactions in cases where it is uncertain that there has been any disparity in treatment.

The following provides a discussion of the problems involved with the Staff's proposal to pay penalties on transactions until the truncated z-score is excessively modified all the way back to zero. The first two paragraphs are excerpts from the FL Staff Strawman. BellSouth's discussion follows.

> ***"Cell Correction (Parity Point versus Detection Point) & Amounts Per Transaction***
>
> After the cells are ranked by z-score, the cell with the largest negative z-score is corrected to 0 and the truncated z is recalculated. The question here is to what

value should the truncated z be compared? Should the truncated z be compared to the balancing critical value as is performed in the pass/fail determination? Alternatively, should the truncated z be compared to zero on the basis that the sample means and proportions are the best estimates of performance in the population? Stated differently, beyond the BCV, there is statistical certainty (emphasis added) that BellSouth provided disparate service. Between the BCV and zero, the probability that BellSouth provided disparate service is higher than the probability that BellSouth provided parity service, albeit statistically uncertain. (emphasis added)

Staff believes that both parties have strong arguments for their positions. Therefore, staff is providing a hybrid proposal as part of a compromise that should incent parity performance, while appropriately compensating CLECs for discriminatory performance. Given BellSouth's strong market position, staff does not believe a "commercial" fee schedule, as proposed by BellSouth, is appropriate for transactions that were certainly disparate. The CLEC should be "refunded" the money paid for clearly discriminatory service and also be compensated for some additional costs that the CLEC incurred in obtaining the account. Therefore, staff proposes that for those transactions that require correction to reach the BCV, the per transaction fee should be double the "commercial" fee. For those additional transactions that bring the truncated z from the BCV to zero, the fee should be analogous to a commercial refund. The following example is intended to illustrate the calculation process, but should not be used to draw any other inferences."

1. This approach causes BellSouth to pay on transactions where there is a high degree of uncertainty that a failure occurred. Statistical certainty is not the same as being absolutely certain. Staff's recommendation includes three phrases that appear to confuse the meaning of statistical certainty. The first phrase states "...beyond the BCV, there is statistical certainty that BellSouth provided disparate service." This equates statistical certainty with having a material difference in the data. The second phrase states "staff does not believe a commercial fee schedule, as proposed by BellSouth, is appropriate for transactions that were certainly disparate." This implies that we can tell, with absolute certainty, which transactions were out-of-parity. However, in reality, only processes can be out-of-parity, not individual transactions. Also, statistical tests are only

designed to find material differences in processes; they cannot determine absolute differences. The third phrase states, "for those transactions requiring correction to reach the BCV,.." This phrase is the most true of the three. When we have a statistically significant difference in the data, we can identify which transactions require correcting (better performance) for the processes to pass the established parity test.

BellSouth believes that Staff confuses statistical certainty with being absolutely certain that BellSouth provided disparate service. This a flawed conjecture. The reason is that there is always an error of saying that BellSouth is out-of-parity when in fact BellSouth is providing parity. This is Type I error, and in this case, none of the excessive transactions were caused by discrimination, only by inherent randomness in the process. BellSouth also agrees that this false positive will occur occasionally and is willing to accept that risk and pay fees when it occurs. However, paying for transactions that position the truncated z-score anywhere above the BCV adds insult to injury and BellSouth should not be required to pay for these transactions. With regard to Type II errors, BellSouth and the CLECs agreed in the original SEEM plan that there would be no penalties assessed when BellSouth passed the statistical parity test, which is the only time that a Type II error can occur. Accordingly, BellSouth does not believe that Type II error is an issue here. So why suggest for BellSouth to pay anything after BellSouth corrects enough transactions to pass the test? After BellSouth passes the test there is only Type I error.

2. The definition of materiality should be the same for the pass/fail determination and for the calculation of penalties. Again, BellSouth does not believe the uses of the terms "statistical certainty" and "statistically uncertain" are correct

descriptions as used in staff's recommendation. Because the "delta" concept was designed to define materiality in evaluating the hypothesis tests results, we should use the term "material" for when the hypothesis test indicates that there is a significant difference in BellSouth and CLEC performances and "immaterial" when the hypothesis test indicates that there is not enough evidence that a difference exists. These terms better indicate the true nature of results of the truncated z-test.

Realizing that variability exists in any process, the hypothesis test was designed to help differentiate between "chance" and a true difference. In this light, the Commission attempted to determine a delta value that sufficiently distinguished a material difference from an immaterial difference; one that separates "chance" from a true difference in performance. This material difference, delta, is used to determine the balancing critical value (BCV) which is THE point that the Commission has determined to represent a material difference in performance. However, the converse must also be true - the BCV also indicates when the difference in the sample means is due to "chance" and thus represents an immaterial difference in performance.

Because of this reasoning, only the transactions that actually CAUSE the material difference should be penalized and all other transaction's differences must be considered immaterial since they do not cause the hypothesis test to fail. There must be one consistent way to define materiality, and that materiality determination must apply to both the pass/fail determination and the calculation of penalties. To require payment of transactions that are required to reduce the truncated z-score to zero eliminates any materiality determination from the calculation and penalizes BellSouth as if these transactions were causing material failures even though their own test said they were not.

If staff believes that the materiality of the statistical test is not sufficient for determining materiality, then the delta value should be adjusted before the beginning of the testing procedure; not applied and then negated as proposed in the strawman. By requiring BellSouth to pay penalties for values that cause the truncated z to reduce beyond the already determined material region and into the "chance" zone, staff has changed the principles used in establishing the original value of delta and has essentially created a new untried statistical test. If staff wants to create a new statistical test, then that project should be undertaken after conclusion of this review. Neither BellSouth nor the CLECs expressed a need to invent a new test which will be a time consuming endeavor.

Statistical literature provides some guidance in the problems created when one tries to create precise delineations between two nebulous universes. For instance, Kempthorne (1976) stated "No one, I think, really believes in the possibility of sharp null hypotheses that two means are absolutely equal in noisy sciences." In other words, one should not measure mud puddles with a micrometer. However, by paying penalties for transactions that did not have a material influence on the failure of the hypothesis test, staff has decided to hold BellSouth responsible for any noise, 'chance', that occurs in the process. Variation always exists in data. That variation is due to either common causes (immaterial differences), which are evident in the randomness within a single distribution; or to special causes, which discriminate between several distributions. Common causes simply happen. They do not require a change in the process. In contrast special causes are where systems and processes lose efficiency and these should be corrected where possible. In the SEEM plan, we cannot assign common causes as special causes and require BellSouth to pay penalties for immaterial differences.

3. Type I and Type II errors are no longer balanced. - In evaluating the affected volume by zeroing out cells back to the BCV we keep the balanced Type I and Type II errors that were established at the beginning of the analysis. This consists of zeroing out cells, which models what would happen if BellSouth provides equal to or better performance to the CLEC in that cell, but which leaves the underlying distribution unchanged. The original data actually sets the distribution for the analysis which assumes that the performances are equivalent (the null hypothesis). The subsequent zeroing out is just finding how many of the original data cells would have had to have been at zero to have passed the initial hypothesis test.

However, in evaluating the affected volume by zeroing out cells back to the point where the truncated z equals 0 we are significantly increasing the Type I error. As noted in the workshop, due to very small cell volumes and number of cells, these Type I errors are already very large. By requiring payment on cells that immaterially affected the failure of the test, staff is increasing the Type I error even more for the payment part of the plan.

BellSouth's proposed zeroing-out method keeps the hypothesis test's integrity in place by continuing to zero-out cells until the data that caused the initial determination of failure, based on the Balancing Critical Value, are fixed. However, by continuing to 'fix' cells all the way back to the zero point, does not automatically mean that the null hypothesis is true. There is a much literature to suggest that it was never the intention of a hypothesis test to prove that the population means are equal when the sample means are equal.

The effect of calculating penalties back to the zero point, is best described by Cohen (1994:997) who noted that statistical testing of the null hypothesis "does not tell us what we want to know, and we so much want to know what we want to know that, out of desperation, we nevertheless believe that it does!" The Staff Strawman implicitly assumes that the sample means being equal is the best indicator of the population means being equal. In fact, the hypothesis test has only two potential outcomes; fail the test or don't fail the test. Thus the only correction available is to see what changes can be made to go from failing the test to not failing the test.

4. Staff Strawman will force BellSouth to provide Superior Service in order to avoid penalties. – A critical point that may have been overlooked in the Staff Strawman is that during the initial pass/fail determination, the exceptional service provided by BellSouth is 'truncated.' That is, the z-scores in these cells are set to zero. The truncation of superior service, coupled with paying for transactions required to move the truncated z between the BCV and zero point means that BellSouth must pay until CLECs are given better performance, not just equivalent service.

An alternative would be to balance the modified z values before truncation. However this would cause some additional problems. One, this would require more programming, computer space, and time to develop, implement and run monthly. Two, as with taking the truncated z back to zero, it basically creates a new statistical test for penalty payments. This procedure causes a disjoint between testing for failure and calculating remedy payments. As discussed earlier, any consideration of a new statistical test should be explored after this review is completed and the egregious problems in SEEM for which fixes are known are solved. In other words, the focus should be on

solving known SEEM problems before embarking on researching areas where there is only a suggestion of potential problems that we neither know exist or how to solve them if they do.

5. **Paying back to zero will excessively increase penalty payments** - Zeroing out cells until the means are equal can cause excessive penalties for "non-statistically significant" differences. Using real data for example, the submetric Order Completion Interval – UNE Loop – Non Dispatch in April 2004, required only one transaction to be "zeroed out" to pass the established truncated Z statistical test for pass/fail. However, 26 transactions would have to be "zeroed out" to make the truncated Z statistic equal to zero. That represents an increase of 2600% or 26 times as many transactions (which equates to an increase of 1250% more penalties.

6. **Proven Methodology** – The methodology proposed by BellSouth was a new application in the SEEM plan. However this application was inspired by methodology frequently used in multivariate quality control to identify which variables in a process cause a failure in the overall multivariate test statistic. In a methodology diagrammed in the Journal of Quality Technology 1996, Mason, Tracy and Young proposed to, once the overall test failed, remove the variables in order of influence on the failure by taking out the impact of the largest influence first. (This is essentially BellSouth's proposal.) Their conclusion is to remove variables until the overall test passes. At that point they conclude that the special cause variation has been accounted for and that all that remains is the immaterial common cause variation. (See point #2 above.) This supports BellSouth's position that once the overall test passes, BCV < truncated Z, then the "failed" transactions have all been identified.

II. The Proposed Use of Multipliers of Two Times and Four Times the Commercial Fee Amounts, as Shown in Table 4 of the Strawman Proposal, Will Result in Significant Increases in Penalties. Absent Any Indication of Increased Impact on the CLEC, Such Dramatically Increased Penalties are Arbitrary and Unwarranted.

BellSouth would like to acknowledge the Staff's recognition and conclusion, as reflected in its approach, that fees paid under the SEEM plan should vary in accordance with aggregate indicators of performance. Indeed, BellSouth noted in its initial proposal that unless penalties paid under the SEEM plan are directly tied to performance levels, efforts to manage the business to improve performance would not necessarily result in decreased penalty payments. This, of course, would not allow BellSouth to manage its business in a rational and productive manner.

The upshot of the recognition that SEEM penalties should be directly tied to performance was the basis for BellSouth recommending the use of a tripwire. Specifically, BellSouth proposed a tripwire approach that triggered the use of a high, standard or low performance fee schedule. This approach was based on the recognition of four primary points: (1) the professed role of SEEM is to prevent backsliding; (2) the SEEM plan is not the sole mechanism that CLECs have to address backsliding or discriminatory treatment; (3) tying the level of fees paid to BellSouth's ongoing performance relative to performance levels that existed at section 271 approval is the most direct and practical way to achieve the purpose of the plan; and (4) fees could not be rationally tied to performance unless the penalty plan is transaction-based rather than measurement-based.

The Staff did indeed recognize the need for a more direct link between the amount of penalties paid and the level of performance provided by moving from a measurement-based approach to a transaction-based approach. Additionally, the Staff proposed to begin with a standard per-transaction fee schedule and increase the amount paid per transaction to remedies based on the relationship to the BCV. Specifically, under the Staff's Strawman proposal, BellSouth understands that the method for determining the amount paid per transaction subject to remedy treatment has two dimensions. According to the first dimension, the CLEC aggregate level performance is determined resulting in either a pass or fail assessment based on the truncated-z methodology. The second dimension is used to create classifications of transactions according to whether the transactions cause the truncated z-score to: (1) fall beyond the BCV in the negative direction, or (2) fall between the BCV and zero. More specifically, penalty determination follows one path if BellSouth passes the aggregate level test and another path if BellSouth fails the aggregate level test.

Aggregate Level Test Passed

If BellSouth passes the test, payments for transactions required to move the truncated-z back to the BCV are assessed at a rate of two (2) times the commercial fee amount from the fee schedule. Transactions required to move the truncated-z back to zero are assessed simply at the commercial fee amount from the fee schedule. There are, however, two immediate problems with this approach.

First, as discussed in the previous section, no penalties should apply to transactions that cause the Truncated-z to fall between the BCV and zero for which there is no support for triggering remedy payments. The fact that the payments for these

transactions are made at a "commercial" level does not discount the more compelling fact that no payments should be made for these transactions when it is uncertain that any discrimination has occurred. Moreover, as demonstrated by the examples already provided, the result of including these additional transactions in the base of those to be remedied can be very substantial, even though the staff has already determined that failures in this region are immaterial and it is possible, or even probable, that no discrimination has occurred.

The second problem is found in the doubling of the commercial fee level for those transactions that require correction to move the truncated-z back to the BCV. Under the current transaction-based plans these are the only transactions that would be subject to remedy payments and BellSouth agrees with that premise. However, applying a factor of two (2) to the commercial fee for these transactions in order to calculate penalty payments is not based on any indication of actual harm caused, anticompetitive behavior or backsliding. The multipliers are in essence arbitrary and as a consequence can cause serious mismatch between performance level and penalties paid.

Aggregate Level Test Failed

The two problems that exist under the proposal if BellSouth passes the aggregate level test are compounded if BellSouth fails the aggregate level test, *i.e.*, penalty payment for transactions where there is uncertainty of disparate treatment (between the BCV and 0) and the arbitrary doubling of penalties where disparate treatment is suspected (values less than the BCV). Specifically, if BellSouth fails the aggregate level test, it must pay penalties for each transaction that must be corrected to move the truncated-z score back to the BCV at a level of four (4) times the commercial fee rate. Further, for each

transaction that must be corrected to move the truncated-z score back to zero BellSouth would be required to pay two (2) times the commercial fee rate.

Again, paying any penalties on transactions associated with the area between the BCV and 0, an area of uncertainty and immateriality, is contrary to both the sound application of the statistical methodology and practical considerations. That is, in the first instance, the statistical methodology is not intended to be used as an indicator of severity, as the multipliers appear to be designed to do, but rather merely as a gauge of the certainty or uncertainty. The practical consideration is that multipliers of 2 or 4 are substantial adjustments to a payment scale and should not be applied without some compelling evidence of harm, backsliding or discrimination.

Summary

In brief, BellSouth believes that the problem with the multipliers is twofold: (1) paying penalties for transactions associated with the region of uncertain disparate treatment, which is between the BCV and zero, is not statistically sound; and (2) the magnitude of the multipliers used based on the two-pronged test of aggregate level results (pass/fail) and relationship of transactions to the BCV are arbitrary and would tend to result in excessive penalties not necessarily tied to actual performance. Moreover, when BellSouth proposed its SEEM fee schedule the basis for amounts provided were based on the design of commercial agreements, which included generally automatic provisions for performance problems. The self-effectuating design and operation of the SEEM plan is consistent with the automatic nature of the commercial provisions upon which BellSouth's fee schedule was based. BellSouth does not believe it is reasonable to

arbitrarily double or quadruple these commercial rates, especially without some connection to actual harm that the CLEC experiences.

Finally, beyond the two problems mentioned that are directly related to the multipliers used in Table 4, there is also the impact of combining these multipliers with the escalation factors discussed in the following section that results in excessive penalty treatment.

III. The Application of Escalation Factors Reaching Four times the Commercial Fee Schedule, As Provided in Table 5 of the Strawman Proposal, is not only Excessive in Itself, But When Combined with the Multipliers in Table 4 is Far Beyond the Realm of Reasonableness.

BellSouth recommended in its initial proposal that Tier 1 penalties not escalate beyond the second month. This is consistent with the fact that in month three Tier 2 penalties begin to apply. Staff's SEEM Strawman proposal not only continues Tier 1 penalties beyond month 2, but also introduces an extreme level of escalation reaching four times the commercial rate beyond month six. This schedule is based on the escalation scale proposed by the CLECs. Importantly, the escalation schedule proposed by the CLECs was based on a measurement-based approach to calculating penalties. The escalation scale found in the CLECs' proposal may have been necessary to achieve some meaningful variation in the fee amounts, which were constant amounts in the measurement-based plan. Under a transaction-based approach the fee amounts vary automatically and based on the number of transactions subject to penalties.

Under the existing transaction-based SEEM plan, the escalation factors vary depending on whether the per-transaction amount is small or large and the domain that is involved. For instance, in the Georgia fee schedule for the Pre-Ordering domain, the per-

transaction fee amount is small ($20) in Month 1 and the escalation factors are high – reaching a factor of 3.5 in Month 6. In contrast, the per-transaction fee for the Maintenance and Repair UNE domain is large ($400) in Month 1 and the escalation factor is moderate – reaching a factor of 2 in Month 6. Moreover, the fees for collocation ($5,000) do not escalate at all.

Notwithstanding the approach taken to escalation in existing transaction-based plans like Georgia, the existing SEEM escalation schedule is excessive and the proposed escalation schedule found in the Strawman proposal expands the rate of increase even beyond the already excessive level and is further compounded when combined with the multipliers in Table 4 of the Strawman. Moreover, BellSouth is unclear as to the basis for the amount that the Fee Schedule increases by each month. Because Tier 1 penalties are paid directly to the CLECs, there should be some indication of harm, whether reasonably inferred or actually demonstrated. Otherwise, the Tier 1 payments become, at the very least, a type of subsidy to CLECs in an already mature local competitive market, or, on a more substantial level, unjust enrichment for CLECs causing an artificial distortion of the market, which is unlikely to benefit the end user. This is particularly problematic when the consecutive months of alleged disparate performance amount to minimal levels of differences between CLEC and retail performance levels.

While the CLECs argue that the penalties paid under the SEEM plan should not represent an attempt to simply compensate them for actual harm caused, but should be large enough to have a punitive affect, this is a very convenient position to take. Indeed, the CLECs are relieved of any obligation to show that they have in fact been harmed by the service they received from BellSouth. Rather, according to their reasoning, even if

they have experienced no harm the SEEM penalty should still be large enough to punish BellSouth. Notwithstanding the professed need for a SEEM plan that includes provisions to deter backsliding, in the penalty determination process there still must be an appeal to logic and reasonableness. Paying significant Tier 1 penalties based on the steep escalation schedule proposed by the CLECs, and despite the lack of any actual appreciable or additional impact on the CLEC is unreasonable. An escalation schedule growing to four (4) times the first months' fee is surely unreasonable in the absence of some basis for such extreme multiplier.

The logic of an automatic escalation provision in general, especially at the Tier 1 level, is questionable. Contrary to the position taken by the CLECs, the Tier 1 schedule was intended to reflect liquidated damages and there is no basis to conclude that damages continue to escalate at the rate or extent indicated by the current schedule especially since each month's failures are separate transactions unrelated to transactions in the previous months. This is particularly onerous since the escalation factor does not take into account cases where the metric may only be slightly out of parity, or even that the retail analog used is not a close enough match to the CLEC measure.

Finally, when the escalation factors are combined with the multipliers found in Table 4 of Staff's proposal, the resulting penalties could be astronomical. For example, if BellSouth misses a Provisioning–UNE sub-metric consistently at the CLEC aggregate level by only a slight amount, and this occurs through month seven, BellSouth would have to pay as much as $1,840 ($115*4*4) for the each transaction that needs to be corrected for the Truncated-z to reach the BCV. Further, for each transaction that must be corrected for the Truncated-z to reach zero (0), BellSouth would be required to pay

$920 ($115*2*4). It should be noted that under BellSouth's transaction based SEEM plans, BellSouth is not be required to pay penalties on the transactions that needed to be corrected for the truncated-z to reach zero. In addition to the Tier 1 penalties, Tier 2 penalties would have also applied from month three forward.

The bottom-line is that the cumulative affect of the multipliers, escalation factors and the requirement to pay penalties on transactions associated with the region between the BCV and zero will result in extremely high Tier 1 penalties in cases where there is no indication of material harm to the CLECs. Moreover, Tier 2 penalties would also apply beginning in month three. This compounding of penalties represents a very serious concern for BellSouth.

It was, in fact, the excessive nature of the existing SEEM plan that prompted BellSouth's recommended changes to the plan. Examples of penalty payments to CLECs amounting to years of free service highlighted the problem with the existing fee structure. The Staff should also be concerned with a plan that pays such excessive fees to CLECs because it artificially distorts the market. Indeed, the CLECs are not encouraged to operate as efficiently as is feasible if its operations are substantially supplemented by SEEM payments. This is especially true when these SEEM payments are far beyond reasonable compensation.

IV. The Fee Schedule for the Maintenance and Repair Domain Should be Different From the Fee Schedule Used for Provisioning.

BellSouth does not believe that it is appropriate to use the same amounts in the SEEM Fee Schedule for both Maintenance & Repair measures and Provisioning measures. In BellSouth's proposal, the SEEM Fee Schedule amounts specified for the

Maintenance and Repair domain are based on recurring costs to the CLEC, while the fee amounts specified for the Provisioning domain are based on non-recurring costs to the CLEC. This approach links the type of harm caused with the fees paid by the CLEC.

Specifically, when a service is initially installed the CLEC incurs onetime or nonrecurring costs. If BellSouth fails to install the service properly a refund of these nonrecurring costs would be the typical remedy. Thus, the Provisioning measures fee amounts should be tied to nonrecurring costs. Similarly, once the service is installed the CLEC pays recurring costs. If a trouble condition occurs with the service after installation, the typical and appropriate approach in commercial arrangements would be to refund some portion of the recurring costs associated with the outage time. This is the method used for retail customers and is rational for use with respect to payments to the CLEC. In BellSouth's proposal, however, BellSouth is not simply paying the CLEC an amount associated with the portion of time that the customer was out of service or experienced degradation in service. Rather, BellSouth would pay the entire monthly recurring cost.

While the Staff indicates that the Maintenance & Repairs fees should be the same as the Provisioning fees because the CLEC could have expended a great deal of time and effort acquiring the customer only to lose that customer because of discriminatory maintenance and repair, this hypothetical circumstance in every instant where a penalty is due. Again, SEEM payments are automatic. Damages arising out a missed Maintenance and Repair metric are not. A review of BellSouth's performance in the Maintenance and Repair area shows that even when the reports indicate that a given measure is out of parity, the differences are often small. The measure Customer Trouble Report Rate

(CTRR) is one measure that BellSouth has consistently pointed to as a case where the service provided to the CLEC and to BellSouth retail is very close yet, BellSouth frequently pays penalties, often very large penalties. There is no indication that such small differences in performance cause any harm to CLECs or its customers. Surely, such small differences in performance would not cause a CLEC to lose its customers. Further, with the CTRR measure, what is being tracked is customer reports. These reports may not even represent an actual customer trouble because CTRR is based on reports only. Yet, these reports subject BellSouth to penalties under the plan.

Moreover, given that the SEEM plan is designed to work automatically, without resorting to the filing of complaints or claims by the CLEC, the atypical case (where the CLEC loses a customer due to BellSouth's maintenance & repair performance) should not be presumed in determining SEEM penalty amounts. Surely, if the CLECs experience these extreme cases where a customer is lost due to BellSouth's performance, it should not be difficult for the CLECs to bring such cases to the Commission's attention, in the form of a specific complaint. In these instances the damages to the CLEC would not be so speculative as trying to incorporate such cases into a self-effectuating enforcement plan.

CONCLUSION

For the reasons set forth herein, BellSouth respectfully requests that the Staff incorporate BellSouth's recommendations into its Strawman Proposal. By incorporating BellSouth's recommendations, the Staff will lay the foundation for the approval of a more efficient SEEM Plan that accomplishes at least three critical objectives: (i) a rational and reasonable link between performance and penalties (ii) maintains statistical

certainty; and (iii) incents continued performance at a level that meets or exceeds the level of service that earned long distance authority. Such a SEEM Plan would help assure that CLECs will continue to have a meaningful opportunity to compete in the local market.

Respectfully submitted this 21st day of January, 2005.

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Exhibit A

SEEM Staff Strawman

Measure-Based vs. Transaction-Based Plan

The existing SEEM plan is a measure-based plan, and the current six-month review is addressing if this plan is in need of modification. Several shortcomings to the current plan have been identified by the parties. These shortcomings have been addressed in the proposal presented below.

The first determination to be made is whether the SEEM plan should be measure-based or transaction-based. The issue comes down to which plan provides better incentives for BellSouth to provide parity performance to its wholesale customers, the CLECs. In addition, the selected plan should inherently adjust the incentive as the level of performance changes.

BellSouth presented a transaction-based plan during the initial phase of this docket that included a feature called the parity gap, which was used to estimate the number of disparate transactions. A transaction-based plan was not adopted by this Commission because of the visible shortcomings in this particular estimation process. BellSouth has presented a new transaction-based proposal with a different method for measuring the number of disparate transactions in the current review. Although this new plan is better, it would need improvements in order to be acceptable to staff. Needed improvements must include increasing the remedy amount per transaction where disparity is certain, adjusting the point of reference for determining disparate transactions, and imposing a minimum remedy payment for nascent services.

The CLECs' proposal builds on the existing measure-based plan and incorporates a new severity mechanism. The severity proposal borrows ideas from the discussions between staff and the parties during the preceding year, wherein staff attempted, without reaching agreement, to overlay a severity mechanism onto the existing SEEM plan. The new severity mechanism proposed by the CLECs does not attempt to ensure dollar neutrality nor does it include a direct link from existing performance and volumes to payments, as staff had attempted previously. Nevertheless, the CLECs' proposal includes an indirect link to typical performance and volumes and existing fees through the B coefficient. Staff, however, is concerned that the CLECs' severity mechanism requires use of constraints to help maintain appropriate fee levels. Also, while the CLECs' proposed payment function is logical at a basic level, certain components of the function could just as easily be expressed in a different manner and still be logical.

The concern for sufficient incentive has most often been the CLECs' argument against the transaction-based plan. Staff believes BellSouth's incentive is tied more to the dollars paid and less to the type of plan or method of calculation. A different argument for the measure-based plan that has also been advanced is that the transaction-based plan does not link a CLEC's experienced harm to the remedy amount. However, staff believes the same argument can be made against the measure-based plan. The CLEC's harm is difficult, if not impossible, to measure, and this difficulty is compounded when volumes are low. Because measuring harm is difficult, our objective is to ensure that BellSouth has sufficient incentive to provide parity level performance to the CLECs.

Staff believes that modifying BellSouth's proposal to include enough incentive, is a more rational approach than attempting to modify the CLECs' proposal to include an acceptable

severity mechanism. For this reason, staff's proposal is based on the transaction-based plan proposed by BellSouth, with care being taken to develop a reasonable compromise between the parties' positions and interests. Staff has been very attentive to the parties' concerns and often shares in the concerns on both sides.

Of note, staff believes the BellSouth and CLEC proposals have a distinct, philosophical difference. The CLECs' proposal is predicated more on the estimated severity of the performance failure, while BellSouth's proposal is based more on the statistical certainty of the performance failure. These are two different, but rational, bases for a SEEM plan. While staff acknowledges recent efforts to overlay a severity feature onto the existing SEEM plan, estimating severity has proven very problematic for the past several years. Intuitively, an estimate of severity needs to incorporate a disparity index and volume in some manner, but finding an incontrovertible basis for selecting one formulation over another has proven to be very difficult. Even setting these issues aside, if volumes are low, the severity estimate may include a high level of uncertainty. Given these issues in estimating severity, staff believes that basing the SEEM plan on the statistical certainty of the performance failure is more practical.[1] In addition, the statistical certainty concept can be used in quantifying disparate transactions, which in turn provides some estimate of the severity of the performance failure, albeit a different type of indicator than proposed by the CLECs.

The plan outlined here only addresses that portion of BellSouth's proposed SEEM plan that determines the actual remedy amount based on a failure in a given submeasure. In particular, this proposal does not include revisions to the administrative plan, nor the level of disaggregation for submeasures. Additionally, it does not include the determination of delta for mean measures or the analogous determination of Psi for proportion measures. These will all be analyzed and addressed at a later time.

Priority Cell Ranking

In order to ascertain which transactions should be corrected BellSouth has proposed ranking the cells by the z-score. An alternative could be to rank the cells with negative scores by volume and correct the cells with the most volume first. For the most part, high volume cells should get corrected through the z-score ranking, because the volumes affect the z-scores, which in turn affect the truncated z. Nonetheless, ranking by volume could inappropriately cause cells that may not be disparate to be corrected, while leaving those that are certainly disparate, without correction. Furthermore, ranking by the z-score, a measure of certainty, guarantees correction of disparate cells. An argument could certainly be made for ranking by severity; however, as previously mentioned, measuring severity is difficult, if not impossible. Staff believes that ranking by z-score has merit and proposes this approach.

Cell Correction (Parity Point versus Detection Point) & Amounts Per Transaction

After the cells are ranked by z-score, the cell with the largest negative z-score is corrected to 0 and the truncated z is recalculated. The question here is to what value should the truncated z be compared? Should the truncated z be compared to the balancing critical value as is performed in the pass/fail determination? Alternatively, should the truncated z be compared to zero on the

[1] Staff notes that in the hearing phase of Docket No. 000121-TP, the testimony addressed the need for a severity feature, although the concepts of severity and statistical certainty were both raised in this context.

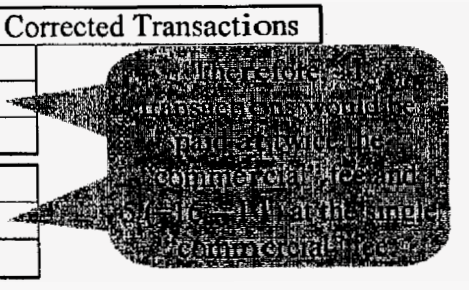
basis that the sample means and proportions are the best estimates of performance in the population? Stated differently, beyond the BCV, there is statistical certainty that BellSouth provided disparate service. Between the BCV and zero, the probability that BellSouth provided disparate service is higher than the probability that BellSouth provided parity service, albeit statistically uncertain.

Staff believes that both parties have strong arguments for their positions. Therefore, staff is providing a hybrid proposal as part of a compromise that should incent parity performance, while appropriately compensating CLECs for discriminatory performance. Given BellSouth's strong market position, staff does not believe a "commercial" fee schedule, as proposed by BellSouth, is appropriate for transactions that were certainly disparate. The CLEC should be "refunded" the money paid for clearly discriminatory service and also be compensated for some additional costs that the CLEC incurred in obtaining the account. Therefore, staff proposes that for those transactions that require correction to reach the BCV, the per transaction fee should be double the "commercial" fee. For those additional transactions that bring the truncated z from the BCV to zero, the fee should be analogous to a commercial refund. The following example is intended to illustrate the calculation process, but should not be used to draw any other inferences.

Cell	No. CLEC Misses	Cell Z Score	Cell Rank	Truncated Z after cell correction
1	5	-7.85	1	-2.82222
2	1	-5.45	2	-2.41678
3	1	-3.34	3	-2.03023
4	3	-2.38	4	-1.13887
5	4	-1.62	5	-0.29134
6	7	-1.55	6	0.91925
7	4	-0.55		**BCV: -0.966512**

Table 2: Determination of Number of Failed Transactions using Interpolation

Cell #'s corrected	Truncated Z from Table 1	Total Corrected Transactions
1 – 4	-1.13887	10
1 – 4 & part of 5	-0.96651 BCV	11
1 – 5	-0.29134	14
1 – 5	-0.29134	14
1 – 5 & part of 6	0.00000	16
1 – 6	0.91925	21



The Tier 1 fee schedule shown in Table 3 is taken from BellSouth's proposed SEEM plan with two significant changes. Staff has reviewed the fee schedule proposed by BellSouth and the associated reasoning behind each of the fees. From staff's perspective, none of the reasoning seems objectionable, except that the rates used to develop the schedule should be Florida-specific. The only other significant change proposed by staff involves Maintenance and Repair. Since a CLEC could have expended significant time and money in acquiring the customer, only to lose the customer to discriminatory maintenance and/or repair service, staff believes that using

[2] The truncated z calculations may not be exactly correct since not all the data is provided in this table.

the fee from the provisioning domain is appropriate. Staff also notes that with the existing SEEM, these two domains have the same fees.

Table 3: Proposed Florida Tier 1 and Tier 2 Per Transaction Fee Schedules

Performance Measurement	Tier 1 "Commercial" Fee	Tier 2 Fee
OSS/Pre-Ordering	$ 10	$ 15
Ordering	$ 20	$ 30
Provisioning – Resale	$ 40	$ 60
Provisioning – UNE	$ 115	$ 175
Provisioning – UNE-P	$ 55	$ 85
Maintenance and Repair – Resale	$ 40	$ 60
Maintenance and Repair – UNE	$ 115	$ 175
Maintenance and Repair – UNE-P	$ 55	$ 85
LNP	$ 115	$ 175
Billing – BIA	2.0%[3]	3.0%[3]
Billing – BIT	$ 7	$ 11
Change Management	$ 1,000	$ 1,500
IC Trunks	$ 25	$ 40
Collocation	$ 3,165	$ 4,750

Now, to complete the example from above: since the example was taken from the Percent Missed Installation Appointments metric, in the Provisioning-UNE domain, the per transaction amount would be $115. Therefore, since 11 transactions corrected the truncated z to the BCV, then 11 * $115 * 2 = $2,530 and since 5 more corrected transactions brought the truncated z up to 0, then 5 * $115 = $575, for a total of $3,105.

The calculations under Tier 2 should be performed analogous to those done in Tier 1. All transactions that are certainly disparate are paid at double the associated Tier 2 per transaction fee, while for those transactions that bring the truncated z from the BCV to zero, the associated fee specified in Table 3 should be paid. The Tier 2 fee schedule proposed in Table 3, is taken from BST's proposed SEEM plan, but recast to reflect only Florida rates. The fees were rounded up to the nearest $5 for ease of calculation, and the fee for the Change Management domain was increased from Tier 1.

Overall Performance

Staff has concerns with BST's initial proposal for an overall performance incentive that aggregated all submetrics. However, the volatility of other less aggregated approaches to overall performance forces staff to consider other possibilities.

Staff proposes that for any Tier 1 payment where the same submeasure experiences a failure for the CLEC aggregate in the same month, the payment to the CLEC be doubled. Table 4 illustrates how Overall Performance and Certainty of Disparity are to be handled in tandem. For example, if BST's performance causes a CLEC to experience a failure in a given submeasure and causes the same submeasure to experience a failure in the CLEC aggregate, then transactions that

[3] Reflects percent interest to be paid on adjusted amounts.

require correction to reach the BCV are paid at four times the "commercial" fee, and those additional transactions that when corrected bring the truncated z to zero, are paid at twice the "commercial" fee.

Table 4: Tier 1 Per Transaction Fee Determination
Based on Certainty of Disparate Transactions and CLEC Aggregate Performance

	Below BCV	Between BCV and 0
CLEC Aggregate passes	("Commercial" fee)(2)	"Commercial" fee
CLEC Aggregate fails	("Commercial" fee)(4)	("Commercial" fee)(2)

Minimum Remedy Payment

Staff proposes that a minimum remedy payment apply to nascent services. Certainly an argument could be made for applying the minimum payment to products with inherently low volume and in those occasions where, for whatever reason, volumes in a given submeasure for a given CLEC are low (i.e., a small CLEC or a CLEC who is testing a product). Where a product, such as collocation, has inherently low volumes, staff believes that the fee schedule has been set accordingly, and no minimum remedy is necessary. In the case where volumes are low for whatever reason, staff believes that the escalation feature can be used to mitigate any concern. Additionally, staff proposes that these situations be monitored to determine if any further action is needed.

Staff proposes that nascent services be defined as new, advanced or other services that are expected to grow, but have to date only achieved negligible levels of market penetration. For these services, BellSouth's payments to CLECs and the Commission should be increased, until such time as market penetration has been achieved.

If, for the three-month rolling average, more than 10 but less than 100 transactions are observed for a submetric on a statewide basis, then the associated fee(s) to the CLECs and the Commission will be trebled. On the other hand, if during the same time frame, 100 or more transactions are observed for the sub-metric, then this provision will not apply. Once a service does not satisfy the nascent criteria, the service is ineligible to be classified as nascent in the future.

Escalation

The escalation or persistence factor is a necessary Tier 1 feature of the plan. BellSouth needs incentive to ensure that systemic problems do not persist, and the CLECs need assurance that concerns with this persistence will be handled appropriately. Staff believes that the CLECs have proposed a suitable escalation concept. Table 5 shows the staff proposal. The escalation or persistence factor, corresponding to the number of months that a given CLEC has experienced a failure in a given submeasure, would be multiplied by the per transaction fee.

Table 5: Escalation Factors

Consecutive Months in Violation (including current month)	Escalation Factor
1	1
2	1.5
3	2.0
4	2.5
5	3.0
6	3.5
More than 6	4.0

Two Months of Data versus One Month of Data

Due to concerns raised both by the CLECs and BST, staff is not proposing data be analyzed on a two-month basis. The CLECs only favored use of the two-month approach in certain, limited situations, and BellSouth was concerned with their own reporting. While staff considered including a two-month feature, after consideration of these and other concerns, staff has chosen not to include it.

Conclusion

This SEEM strawman proposal incorporates aspects of proposals from both parties, as well as a few innovative approaches to solving some of the more complicated issues. Staff has strived to ensure that the plan is workable and effective, while still maintaining the balance necessary for an acceptable plan. The proposal embodies several aspects that separately may not appear to provide enough incentive; however, taken as a whole the incentives should be adequate to ensure provision of parity service. By borrowing pieces from each of the proposed plans and constructing a few nonstandard components, staff believes this revision of the plan can be accepted by all.