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March 25, 2005

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 Action Items from Staff on proposed changes to the SEEM Plan 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. Hatch

Tracy W. Hatch

TWH/scd
Attachment
cc: Parties of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the CLEC's Reply was served by electronic and U.S. Mail this 25th day of March 2005 to the following:

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[s/ Tracy W. Hatch](#)

Tracy W. Hatch

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:)	
)	
Performance Measurements)	Docket No. 000121A-TP
for Telecommunications)	
Interconnection, Unbundling)	March 25, 2005
and Resale)	
_____)	

CLEC COALITION’S RESPONSE TO ACTION ITEMS

Competitive Local Exchange Carriers (“CLECs”), AT&T Communications of the Southern States, LLC; DIECA Communications Company d/b/a Covad Communications Company (“Covad”); ITC^DeltaCom Communications, Inc. (“ITC^DeltaCom/BTI”); MCImetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc. and Nuvox Communications hereinafter collectively referred to as the “CLEC Coalition,” hereby provides the attached response to Action Items from Staff.

Respectfully submitted this 25th day of March, 2005.

CLEC COALITION

s/ Tracy Hatch

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s/ Jon Moyle

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s/ Floyd Self

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Attachment

Action Item 1: Provide excerpts (that were not already provided) from other state commissions that apply Force Majeure provisions.

Response:

The following is an excerpt from the SBC Texas Performance Remedy Plan regarding force majeure. The same paragraph is in the Illinois 271 plan.

7.0 Exclusions Limited

7.1 SWBT shall not be obligated to pay liquidated damages or assessments for noncompliance with a performance measurement if, but only to the extent that, such noncompliance was the result of any of the following: a Force Majeure event; an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with SWBT or under the Act or Texas law; or non-SWBT problems associated with third-party systems or equipment, which could not have been avoided by SWBT in the exercise of reasonable diligence. Provided, however, the third party exclusion will not be raised more than three times within a calendar year. SWBT will not be excused from payment of liquidated damages or assessments on any other grounds, except by application of the procedural threshold provided for below. Any dispute regarding whether a SWBT performance failure is excused under this paragraph will be resolved with the Commission through a dispute resolution proceeding under Subchapter Q of its Procedural Rules or, if the parties agree, through commercial arbitration with the American Arbitration Association. SWBT will have the burden in any such proceeding to demonstrate that its noncompliance with the performance measurement was excused on one of the grounds set forth in this paragraph. If a Force Majeure event or other excusing event recognized in the first sentence of this section 7.1 only suspends SWBT's ability to timely perform an activity subject to performance measurement, the applicable time frame in which SWBT's compliance with the parity or benchmark criterion is measured will be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the excusing event.