

State of Florida



Public Service Commission
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-M-E-M-O-R-A-N-D-U-M-

DATE: May 20, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets and Enforcement (Harvey, Hallenstein)
Office of the General Counsel (Christensen)

RE: Docket No. 000121A-TP – Investigation Into The Establishment of Operations Support Systems Permanent Performance Measures For Incumbent Local Exchange Telecommunications Companies

AGENDA: 06/01/04 – Regular Agenda – Issue 1 – Procedural – Issue 2 – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000121A.RCM.DOC

Case Background

In Docket No. 000121A-TP, by Order No. PSC-03-0529-PAA-TP, issued April 22, 2003, the Commission agreed that BellSouth's *B-10 Percent Billing Errors Corrected in X Days* wholesale performance measurement should be included in its Self-Effectuating Enforcement Mechanism (SEEM) Tier 1 and Tier 2 plans. The Order, however, deferred implementation of the B-10 penalty until the conclusion of the Commission's proceeding on the SEEM plan remedy structure or 120 days from the date of the issuance of the Order, whichever comes first. Order No. PSC-03-0529-PAA-TP at page 33.

This recommendation addresses BellSouth's November 7, 2003 Motion to modify the 120-day implementation deadline of Order No. PSC-03-0529-PAA-TP. In its Motion, BellSouth requests that the Commission delete the 120-day requirement and defer the penalty implementation until the conclusion of the remedy structure proceeding. The parties requested additional time to negotiate a settlement regarding the B-10 penalty. The parties have been unable to resolve the matter to date, thus, staff believes it is appropriate to move forward.

Jurisdiction

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.01(3) and (4)(g), Florida Statutes. Pursuant to Section 364.01 (3), Florida Statutes, the Florida legislature has found that regulatory oversight is necessary for the development of fair and effective competition in the telecommunications industry. To that end, Section 364.01 (4) (g), Florida Statutes, provides, in part, that the Commission shall exercise its exclusive jurisdiction in order to ensure that all providers of telecommunications service are treated fairly by preventing anticompetitive behavior. In addition, pursuant to Section 364.161 (4), Florida Statutes, LECs are required to provide UNEs, services for resale, requested repairs, and necessary support services in a timely manner. The Commission is required to maintain a file of all complaints made by CLECs against the LECs regarding timeliness and adequacy of service. Furthermore, it is noted that the FCC has encouraged the states to implement performance metrics and oversight for purposes of evaluating the status of competition under the Telecommunications Act of 1996.

Discussion of Issues

Issue 1: Should the Commission grant BellSouth's Motion to Modify Order No. PSC-03-0529-PAA-TP to defer implementation of penalty provisions for performance measurement *B-10 Percent Billing Errors Corrected in X days*, until the conclusion of the proceeding on the remedy structure of BellSouth's Self-Effectuating Enforcement Mechanism (SEEM) plan?

Recommendation: No. BellSouth's Motion to Modify Order No. PSC-03-0529-PAA-TP to defer implementation of penalty provisions for performance measurement *B-10 Percent Billing Errors Corrected in X days* until the conclusion of the proceeding on the remedy structure of BellSouth's SEEM plan should be denied. **(Christensen, Hallenstein)**

Staff Analysis:

BellSouth's Motion: On November 7, 2003, BellSouth filed a Motion to Modify Order No. PSC-03-0529-PAA-TP requesting that the Commission delete the 120-day requirement for implementation of a penalty for measurement B-10 and defer the implementation until conclusion of Commission staff's proceeding on modifications to the remedy structure of BellSouth's SEEM plan. BellSouth believes the current SEEM fee schedule for billing is inappropriate for the B-10 measurement. BellSouth further contends that it is not possible to implement an appropriate penalty for the B-10 measurement until the determination of a new fee schedule dictates the amount of the applicable penalty.

CLEC Coalition Response: On November 20, 2003, the CLEC Coalition filed its Opposition to BellSouth's Motion. The Coalition contends that BellSouth's motion should be denied for three reasons: 1) the motion is untimely; 2) there is no support for BellSouth's motion, in that the current fee schedule designates the remedy amount for billing submeasures and implementation of the new metric is not dependent on the proceedings established to incorporate a "severity component" with the remedy plan; and 3) BellSouth's long term inability to meet an acceptable time frame for completing billing disputes needs to be remedied without further delay.

Analysis: Staff agrees with the CLECs that the motion is untimely. BellSouth could have raised any substantive arguments within the prescribed times for opposing a PAA or appealing a final order. The Order specifically stated that a penalty should be implemented either 120 days from the issuance of the Order or the conclusion of adding the severity component to the remedy plan, whichever came first. The Order was released on April 22, 2003, thus the 120 day requirement was reached August 2003. Staff believes that BellSouth was aware of arguments raised in its Motion prior to the expiration of the protest period; circumstances have not changed.

Staff disagrees with the substantive arguments in BellSouth's Motion. The severity component of the SEEM Plan is not necessary to establish a penalty amount for the B-10 measurement as BellSouth contends. There is a fee schedule currently in existence which can be used to establish an appropriate penalty for B-10. Staff believes that there is no special linkage between B-10 and the proceeding to incorporate a severity component of SEEM. While the severity component will overlay the current fee schedule, it will not eliminate it.

Finally, staff believes that BellSouth's historical performance in this area necessitates implementation of a penalty sooner rather than later. A review conducted by Commission staff in 2002 revealed that BellSouth was taking three months to process resale and UNE billing disputes. Now that a metric has been put in place, performance has improved. However, it is Commission staff's opinion that a penalty should be paid to a CLEC if BellSouth fails to meet the standard for the metric---processing 90 percent of CLEC billing disputes within 45 business days. Commission staff believes that there is no justification for delaying implementation of such a penalty any longer than has already occurred.

Based on the foregoing, staff recommends that BellSouth's Motion to Modify Order No. PSC-03-0529-PAA-TP to defer implementation of penalty provisions for performance measurement *B-10 Percent Billing Errors Corrected in X days* until the conclusion of the proceeding on the remedy structure of Bellsouth's SEEM plan should be denied. Issue 2 addresses the amount of the penalty.

Issue 2: What is the appropriate Tier 1 and Tier 2 penalty structure for BellSouth's wholesale performance measurement *B-10 Percent Billing Errors Corrected in X Days*?

Recommendation: The appropriate Tier 1 and Tier 2 penalty structure for BellSouth's wholesale performance measurement *B-10 Percent Billing Errors Corrected in X Days* should be in accordance with BellSouth's existing SEEM Tier 1 fee schedule for Pre-ordering and the SEEM Tier 2 fee schedule for billing as set forth in Attachment A. The structure should be implemented beginning with June 2004 data. **(Hallenstein)**

Staff Analysis:

BellSouth Telecommunications: On December 4, 2004, BellSouth filed a memorandum providing its analysis of CLEC wholesale bill disputes and adjustments covering a three-month period (June through August 2003). BellSouth used this analysis to propose a penalty amount for measurement B-10. BellSouth's analysis showed that a large number of the billing disputes involved a low monetary value. Seventy percent of the billing disputes resolved had disputed amounts of \$20 or less. BellSouth further contended that one-third of the billing adjustment requests resulted in no billing error. Based on its analysis, BellSouth recommended that the SEEM penalties for Tier 1 and Tier 2 to be \$20 and \$30, respectively.

CLEC Coalition: On January 12, 2004, the CLEC Coalition filed its response to BellSouth's memorandum. The Coalition disagreed with BellSouth's analysis and further claimed that the value of the billing disputes was not accurate. The Coalition contends that BellSouth's analysis of billing disputes and adjustments did not cover a sufficient period of time. The Coalition claimed that a thorough analysis would encompass nine months, at a minimum. Additionally, the Coalition believed that a further review of the billing adjustments was necessary and recommended that a reconciliation meeting be scheduled for all interested parties to discuss the proposed measurement B-10 penalty fee.

Analysis: BellSouth began capturing billing dispute data for measurement B-10 in May 2002. The B-10 measurement intent is to ensure that BellSouth responds in a timely manner to CLEC billing disputes. Prior to implementation of the metric, a Commission audit conducted in 2002 revealed that BellSouth was taking an average of three months to respond to CLEC disputes.

In Order No. PSC-03-0529-PAA-TP, issued April 22, 2003, the Commission ordered measurement B-10 to be included in BellSouth's SEEM plan. The Commission further ordered a benchmark of 90 percent for all CLEC billing disputes to be completed within 45 business days. In other words, BellSouth's failure to respond to 90 percent of the CLEC's submitted disputes within 45 business days would result in a penalty.

Commission staff's examination of BellSouth's 2003 B-10 data shows improvement from 2002 performance. However, Commission staff believes it is still necessary to implement a penalty for measurement B-10 to ensure that BellSouth continues to improve timely processing of CLEC billing disputes.

In response to BellSouth's Motion and the CLEC Coalition's Opposition to the Motion, staff requested that BellSouth conduct an analysis of CLEC wholesale bill adjustment requests

and propose a penalty to be applied to measurement B-10. BellSouth recommended the fee amounts for Tier 1 and Tier 2 be \$20 and \$30, respectively. The CLEC Coalition disagreed with BellSouth's analysis and claimed that the value of the billing disputes was not accurate and the analysis period was too short.

Staff does not believe that BellSouth's proposed penalty of \$20 is appropriate. To arrive at \$20, BellSouth calculated the median amount of all disputes for the September 2003 to March 2004 time period. However, the average value of all disputes paid in Florida for the same period was \$520. BellSouth argues that this amount is substantially greater than the median because the last one percent of disputes have very high values. Staff does not believe that either the median or the average amount is representative of the harm to the CLECs. A more realistic penalty amount lies somewhere in between.

Staff held several meetings and conducted a workshop on March 10, 2004, with the parties to discuss the supporting data used to analyze billing disputes and to further discuss a proposed penalty for measurement B-10. BellSouth wants the penalty to be derived from billing adjustments, whereas the CLECs want the penalty to be set at the current billing fee schedule. Staff has attempted to resolve these differences between the parties. However, absent agreement by the parties, staff believes the appropriate Tier 1 penalty for measurement B-10 lies between the amounts put forth by the parties and within the existing SEEM fee schedule.

Staff agrees with BellSouth that the current fee schedule for billing may be too high for this particular metric for Tier 1. The billing domain first month fee of \$450 was intended to apply to the *Billing Invoice Accuracy* measurement which is more vital to CLECs than resolving disputes in 45 days. While it is staff's preference to maintain an established fee schedule by domain, such as ordering, provisioning and billing, staff sees cause to make an exception in this one limited case. Much of staff's conclusion on this issue is based on the desire to maintain the existing fee structure and work within its parameters.

Staff believes the functional relationship of billing disputes to billing accuracy is similar to that of pre-ordering to ordering. Although pre-ordering is performed on the front end of the ordering process and billing disputes are handled at the end of the billing process, both support the primary functions. Staff believes the relationship between current SEEM penalties for pre-ordering and ordering is applicable to billing and billing disputes for Tier 1. Because there is not a pre-ordering Tier 2 penalty, the Tier 2 fee schedule for the B-10 measurement should remain the same as that of the billing domain.

Consequently, staff reasons that the appropriate B-10 Tier 1 penalty should coincide with BellSouth's existing pre-ordering SEEM fee schedule. In the existing SEEM Tier 1 fee schedule, the pre-ordering penalty is \$250 for the first month of noncompliance, and the penalty is escalated each consecutive month, for up to six months for a cap of \$700. The \$250 penalty lies between the amounts put forth by the parties. The existing SEEM Tier 2 fee schedule for billing should apply to measurement B-10. The \$700 penalty is also the lowest fee in the Tier 2 fee schedule. The Tier 2 fee schedule only applies if BellSouth misses the metric for three consecutive months. Staff's recommended Tier 1 and Tier 2 penalties are in line with the existing SEEM fee schedule and will provide BellSouth with incentive to continually improve performance.

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Therefore, staff believes the appropriate Tier 1 and Tier 2 penalty structure for BellSouth's wholesale performance measurement *B-10 Percent Billing Errors Corrected in X Days* should be in accordance with BellSouth's existing SEEM Tier 1 fee schedule for Pre-ordering and the SEEM Tier 2 fee schedule for billing as set forth in Attachment A. The structure should be implemented beginning with June 2004 data.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation in Issue 2, the resulting Order will be issued as Proposed Agency Action. The Order will become final upon issuance of a Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of the issuance of the Order. This Docket should remain open thereafter to continue the six-month review process outlined in the Final Order.
(Christensen)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 2, the resulting Order will be issued as Proposed Agency Action. The Order will become final upon issuance of a Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of the issuance of the Order. Staff recommends that this Docket should remain open thereafter to continue the six-month review process outlined in the Final Order.

BellSouth Tier 1 Fee Schedule

Liquidated Damages for Tier 1 Measures

Measure	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Billing	\$450	\$650	\$850	\$1,050	\$1,250	\$1,400
Collocation	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
IC Trunks	\$1,200	\$1,650	\$2,150	\$2,600	\$3,100	\$3,550
LNP	\$1,800	\$2,500	\$3,200	\$3,900	\$4,650	\$5,350
Maintenance and Repair	\$1,200	\$1,650	\$2,150	\$2,600	\$3,100	\$3,550
Maintenance and Repair UNE	\$4,750	\$6,650	\$8,550	\$10,450	\$12,350	\$14,250
Ordering	\$450	\$650	\$850	\$1,050	\$1,250	\$1,400
Flow-Through	\$900	\$1,300	\$1,600	\$2,000	\$2,300	\$2,700
Provisioning	\$1,200	\$1,650	\$2,150	\$2,600	\$3,100	\$3,550
Provisioning UNE	\$4,750	\$6,650	\$8,550	\$10,450	\$12,350	\$14,250
Pre-Ordering	\$250	\$350	\$450	\$500	\$600	\$700
Change Management	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000

BellSouth Tier 2 Fee Schedule

Liquidated Damages for Tier 2 Measures

Measure	Payment
Billing	\$700
Collocation	\$15,000
IC Trunks	\$5,950
LNP	\$5,950
Maintenance and Repair	\$3,550
Maintenance and Repair UNE	\$10,400
Ordering	\$700
Flow Through	\$1,400
Provisioning	\$3,550