

State of Florida



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

DATE: April 21, 2005

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

FROM: Division of Competitive Markets and Enforcement (Harvey, Simmons, Hallenstein, Kennedy)
Office of the General Counsel (Teitzman, Scott)

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

AGENDA: 05/03/05 – Regular Agenda – 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

By Order No. PSC-01-1819-FOF-TP, issued September 10, 2001, in Docket No. 000121A-TP, the Commission adopted a Performance Assessment Plan for purposes of monitoring performance levels of Operations Support Systems provided to CLECs. The Performance Assessment Plan is comprised of a Service Quality Measurement Plan (SQM) and a Self-Effectuating Enforcement Mechanism (SEEM) Administrative Plan. The SQM is a comprehensive and detailed description of BellSouth's performance measurements. BellSouth's SQM Plan currently consists of 90 measurements with each related to a specific portion of BellSouth's Operations Support Systems. The SEEM Plan includes key measures to which remedy payments are applied if BellSouth fails to meet the performance standards as agreed by the parties and approved by the Commission.

Some modifications to the Performance Assessment Plan were made in 2002 as a result of Operations Support Systems testing by Bearing Point. Additionally, a review of the Performance Assessment Plan was conducted in 2003. Order Nos. PSC-03-0529-PAA-TP and PSC-02-1736-PAA-TP delineated changes to the SQM Plan and the SEEM Administrative Plan.

In May 2004, BellSouth filed a motion for the establishment of a new Performance Assessment Plan in Florida that was subsequently withdrawn. In July 2004, the Commission initiated a second review of the current Performance Assessment Plan. A series of workshops and conference calls resulted in staff proposing significant changes to the SQM and SEEM plans. In January 2005, BellSouth and interested parties began negotiating on some of the more controversial aspects of the plan. In April 2005, staff was notified that a settlement between the parties had been reached. This recommendation addresses whether or not this Commission should accept the proposed settlement by BellSouth and the parties.

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. 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 adopt the changes to BellSouth's Performance Assessment Plan for Florida as stipulated between BellSouth and the CLEC Coalition in the settlement agreement dated April 18, 2005 (Attachment 1)?

Recommendation: Yes. Staff believes the Commission should approve the stipulated changes to BellSouth's Performance Assessment Plan for Florida as referenced in the Settlement Agreement dated April 18, 2005. **(Harvey, Simmons, Hallenstein, Kennedy)**

Staff Analysis:

The Commission ordered a Performance Assessment Plan for purposes of ensuring that BellSouth is meeting its obligation to provide unbundled access, interconnection and resale to CLECs in a nondiscriminatory manner. The Performance Assessment Plan is a monitoring device that measures the level of wholesale service performance that BellSouth provides to CLECs. It also establishes a standard against which CLECs and this Commission can measure performance over time to detect and correct any degradation of service provided to CLECs.

As part of FPSC Order No. PSC-0187A-FOF-TP, BellSouth is required to participate in review cycles to discuss any proposed changes to the Performance Assessment Plan. In June 2004, staff solicited comments on proposed changes to BellSouth's current Performance Assessment Plan in preparation for the second review cycle.

BellSouth proposed consolidating duplicative measures and eliminating unnecessary measures (i.e., those measures that consistently contain little or no activity on a monthly basis). As part of its proposal, BellSouth also recommended a shift from the current measurement-based remedy calculation approach to a transaction-based approach. Under the current measurement-based plan, BellSouth contended that huge penalties are paid for very small differences in performance between retail and CLEC results. Through the transaction-based approach, BellSouth proposed to modify the SEEM plan to make remedy payments more in line with performance. In other words, monthly payments would be directly proportional to BellSouth's performance in comparison with the standard.

The CLECs proposed to maintain the current structure of BellSouth's performance measures and SEEM plan with some refinements. One such refinement was to build on the existing measure-based plan and incorporate a severity component into the remedy calculation. Under the current plan, the CLECs argued that once service is poor enough to trigger a violation, all further performance degradation has no impact on the remedy amount, no matter how bad the performance becomes. The CLECs' proposal for incorporating severity into the remedy calculation was to correct this omission.

Taking into consideration the comments provided by both BellSouth and the CLECs, staff conducted several workshops and weekly conference calls from September 2004 through March 2005. The purpose of the workshops and calls were to gauge the effectiveness of

BellSouth's performance measures and to determine whether the current remedy structure is effective in driving BellSouth's performance toward the required standards. The workshops and conference calls also gave the parties an opportunity to raise specific issues and to propose changes to the Performance Assessment Plan that constituted reasonable solutions.

In response to staff workshops and conference calls, staff developed proposals to modify BellSouth's SQM and SEEM plans. Staff proposed to streamline the Service Quality Measurement plan by reducing the total number of performance measures, reducing the level of disaggregation, modifying standards, and making miscellaneous changes of an administrative nature.

Staff's proposed modifications to BellSouth's SEEM plan incorporated aspects of proposals from both BellSouth and the CLECs, with care being taken to develop a reasonable compromise between the parties' positions and interests. Staff's proposal was based on a transaction-based plan and included a modification to the SEEM fee schedule. The fee schedule was differentiated in two ways, based on aggregate performance and level of certainty of the failure.

With slight modifications to staff's proposal, BellSouth and the CLECs entered into a stipulated agreement on April 5, 2005, to execute changes to BellSouth's current Performance Assessment Plan. The parties strived to ensure the newly stipulated plan is workable and effective and believe that adoption of the proposed changes to the Performance Assessment Plan will adequately measure and assess BellSouth's operations support systems performance in Florida. Staff supports the agreement and believes that the stipulated Performance Assessment Plan is an improved and more efficient performance monitoring mechanism.

Staff believes the Commission should approve the stipulated changes to BellSouth's Performance Assessment Plan for Florida as reflected in the Settlement Agreement dated April 18, 2005 (Attachment 1). The parties have informally agreed to implement these changes with the June 2005 performance measurement data.¹

¹ Failures in a SEEM submeasure result in remedies that escalate for each successive month of failure. Transitioning to the new Performance Assessment Plan requires BellSouth to restart "failed month" counters. To partially compensate CLECs and the state of Florida for lost penalties during the transition, BellSouth has proposed a transitional plan described in a BellSouth E-mail to staff, dated April 19, 2005. Staff believes BellSouth's transitional plan is fair and reasonable.

Issue 2: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, 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 review process as adopted in the BellSouth's Performance Assessment Plan. **(Teitzman, Scott)**

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, 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 annual reviews and the one-time six-month review as specified in the Settlement Agreement between the parties.