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June 14, 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 an original and fifteen copies of BellSouth's Motion to Dismiss  
FDN's Petition Protesting Order No. PSC-05-0488-PAA-TP, which we ask that you file  
in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was  
filed and return the copy to me. A copy of the same is being provided to 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 14th day of June, 2005 to the following:

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Robert A. Culpepper

**(+) Signed Protective  
Agreement**

#502166

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: June 14, 2005

**BELLSOUTH'S MOTION TO DISMISS FDN'S PETITION  
PROTESTING ORDER NO. PSC-05-0488-PAA-TP.**

Pursuant to Rule 28-106.204(2), Florida Administrative Code, and other applicable law, BellSouth Telecommunications, Inc. ("BellSouth"), moves for the Florida Public Service Commission ("Commission") to dismiss the petition filed by Florida Digital Network, Inc. ("FDN") protesting Proposed Agency Action Order No. PSC-05-0488-PAA-TP, issued May 5, 2005 ("*PAA Order*"), and requesting a formal proceeding in this matter ("FDN Protest"). In the *PAA Order*, the Commission approved a revised performance assessment plan for BellSouth. If the Commission denies BellSouth's motion to dismiss, BellSouth moves, pursuant to Section 120.574, Florida Statutes and other applicable law, for an expedited summary hearing limited to the specific SEEM-related allegations raised in the FDN Protest. As explained below, the allegations set forth in the FDN Protest, even if taken as true, fail to state a cause of action for which relief could be granted by this Commission. Accordingly, the FDN Protest must be dismissed.

**BACKGROUND REGARDING BELL SOUTH'S PERFORMANCE ASSESSMENT  
PLAN AND SEEM REVISIONS APPROVED IN THE *PAA ORDER*<sup>1</sup>**

In September 2001, the Commission adopted a Performance Assessment Plan (collectively, the "SQM/SEEM plan") for BellSouth in Florida. Order No. PSC-01-1819-FOF-TP ("*Final Order*"). The SQM/SEEM plan measures the level of performance (or service) that BellSouth provides to competitive local exchange carriers ("CLECs") in Florida. If BellSouth fails to meet the performance measurement standards set forth in the SQM/SEEM plan, then BellSouth is subject to paying remedy payments (known as SEEM payments) to CLECs (and in some instances to the Commission), as specified by the SQM/SEEM plan. The SQM/SEEM plan was implemented in 2002. Order No. PSC-02-0187-FOF-TP, issued February 12, 2002, as amended by Order No. PSC-0187A-FOF-TP, issued March 13, 2002. The Commission-approved Performance Assessment Plan requires periodic reviews of the SQM/SEEM plan<sup>2</sup> and in connection with such a review, the SQM/SEEM plan underwent certain revisions in 2003. Order Nos. PSC-02-1736-PAA-TP and PSC-03-529-PAA-TP.

In May 2004, BellSouth filed a petition requesting the establishment of a revised SQM/SEEM plan. BellSouth later withdrew its petition because, in July 2004, the Commission initiated a comprehensive review of the current SQM/SEEM plan. In connection therewith,

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<sup>1</sup> As discussed herein, the specific factual allegations set forth in the FDN Protest are limited to SEEM revisions. Accordingly, this Motion to Dismiss is limited to a discussion of the SEEM revisions that were ultimately approved in the *PAA Order*. That said, an equal amount of time, effort, and energy was devoted in developing the revised SQM plan that was approved by the Commission in the *PAA Order*.

<sup>2</sup> SEEM plan, Version 2.7 (updated June 16, 2003), § 3.1 ("During the first two years of implementation, BellSouth will participate in six-month review cycles . . . . A collaborative work group, which will include BellSouth, interested ALECs and the Commission will review the Performance Assessment Plan for additions, deletions or other modifications.")

BellSouth filed comments, a redlined version of its proposed Service Quality Measurement Plan (“SQM”); and a matrix explaining in detail its proposed SQM revisions. In August 2004, BellSouth filed comments, a redlined version of its proposed Self-Effectuating Enforcement Mechanism Plan (“SEEM”), and a matrix explaining in detail its proposed SEEM revisions. BellSouth’s SEEM filing included a new SEEM fee schedule and an exhibit, in addition to the matrix, that explained how BellSouth derived the proposed SEEM fee schedule. Likewise, the CLEC Coalition<sup>3</sup> filed SQM comments in July 2004, and SEEM comments in August 2004. Similar to BellSouth, the CLEC Coalition’s comments included proposed modifications to the SQM/SEEM plan.

In September 2004, the Commission Staff (“Staff”) commenced holding properly noticed workshops and conference calls, open to all interested parties, to consider proposed SQM and SEEM revisions. All told, in discussing SQM and SEEM revisions, Staff presided over at least: (i) nine days worth of workshops in Tallahassee;<sup>4</sup> and (ii) 18 conference calls.<sup>5</sup> All of the aforementioned workshops and conference calls were properly noticed and opened to all interested parties. Importantly, *FDN chose not to attend any of the workshops and chose not to*

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<sup>3</sup> The CLEC Coalition’s member include: AT&T Communications of the Southern States, LLC, DIECA Communications, Inc. d/b/a Covad Communications Co., ITC^DeltaCom, Inc., MCImetroAccess TransmissionServices, LLC and MCI WORLDCOM Communication, Inc., KMC Telecom Inc., and IDS Telecom, LLC, and Z-Tel. The aforementioned CLECs signed the SQM/SEEM settlement agreement approved by the Commission in the *PAA Order*.

<sup>4</sup> Staff held workshops on the following dates in 2004: September 1, 2, 28, 29; October 12, 13; and November 8, 9. A workshop was also held on January 24, 2005.

<sup>5</sup> 2004 conference call dates included: September 23; October 7, 28; November 4, 18; and December 2, 9, 16. 2005 conference call dates included: January 13, 27; February 9, 11, 21, 25; and March 3, 4, 29, 30.

*participate in the vast majority of the conference calls wherein the SQM and SEEM proposals were discussed in detail.*<sup>6</sup>

As it relates to the revised SEEM plan,<sup>7</sup> and after receiving input from BellSouth and the CLEC Coalition, Staff issued an initial SEEM Staff Strawman proposal in December 2004. Among other things, the Strawman proposal included: (i) a transaction-based structure for the revised SEEM plan; (ii) a revised SEEM fee schedule; (iii) a fee escalation mechanism (applicable when performance continues to fall below performance standards); and (iv) a minimum SEEM payment provision for nascent services. In January 2005, BellSouth and the CLEC Coalition filed comments regarding Staff's Strawman proposal. Based on the parties' input, Staff issued a second Strawman proposal in February 2005. (both SEEM Strawman proposals are attached hereto, collectively, as Exhibit "A").

In addition to the Strawman proposals, in March 2005, Staff issued a SEEM Non-Technical Matrix (attached hereto as Exhibit "B"). Among other things, this matrix identified 72 proposed changes to the SEEM plan. For each proposed change, the Matrix set forth: BellSouth's reasoning for the change; CLECs' response; and Staff's position.<sup>8</sup>

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<sup>6</sup> It appears that in the Fall 2004 timeframe, FDN did in fact dial into one or two of the SQM/SEEM conference calls.

<sup>7</sup> Again, notwithstanding the blanket, general statement that FDN is disputing all changes to the SQM/SEEM plan (FDN Protest, ¶ 17), FDN's specific allegations are limited to SEEM revisions. See FDN Protest, ¶¶ 9, 10, and 12. That said, regarding the revised SQM plan, and after conducting an extensive series of workshops and conference calls that included input from BellSouth and the CLEC Coalition, Staff issued several SQM-related preliminary assessments/recommendations ("Staff SQM proposals"). Among other things, the Staff SQM proposals included recommendations for: (i) SQM measurements; (ii) performance standards and business rules for such measurements; and (iii) SQM measures to be included in the revised SEEM plan. In large part, the SQM portion of the Agreed Plan is comprised of Staff's SQM proposals.

<sup>8</sup> Staff also developed a SEEM Technical Matrix.

With the various Staff documents in hand, BellSouth and the CLEC Coalition engaged in numerous discussions that resulted in the agreed upon SQM/SEEM plan that Staff recommended for the Commission to adopt in April 2005 (“Agreed Plan”). On May 5, 2005, the Commission approved the Agreed Plan. Three weeks later, on the last day before the *PAA Order* was to become final, FDN filed its protest.

### **LEGAL STANDARD**

A party may move for a motion to dismiss pursuant to Rule 28-106.204(2), Florida Administrative Code. To sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted. *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1<sup>st</sup> DCA 1993). In determining the sufficiency of a complaint, the Commission should confine its consideration to the facts alleged in the complaint and the grounds asserted in the motion to dismiss. *See Flye v. Jeffords*, 106 So. 2d 229 (Fla. 1<sup>st</sup> DCA 1958). Indeed, this Commission recently recognized that a petition challenging a Proposed Agency Action Order must allege specific facts that, taken as true, state a cause of action upon which relief can be granted. *In re: Petition for approval to review customer contact protocol by BellSouth Telecommunications, Inc, Order Dismissing Americatel Corporation’s Petition for Initiation of Proceedings for Failure to State a Cause of Action*, Docket No. 031038-TL, Order No. PSC-04-0636-FOF-TL, issued July 1, 2004. Applying these principles to the case at hand mandates that the Commission dismiss FDN’s Protest.

**FDN'S ALLEGATIONS FAIL TO STATE A CAUSE OF ACTION UPON WHICH RELIEF CAN BE GRANTED. ACCORDINGLY, THE COMMISSION SHOULD DISMISS THE FDN PROTEST.**

- A. **The purpose of the Agreed Plan is for BellSouth to maintain a level of nondiscriminatory performance that provides CLECs a meaningful opportunity to compete in the local market. Accordingly, whether the Agreed Plan provides “adequate compensation” to a particular CLEC is irrelevant. As such, the FDN Protest fails to state a cause of action upon which relief can be granted.**

In opposing approval of the Agreed Plan, FDN asserts that there are unresolved issues regarding “the impact of the stipulated Performance Assessment Plan,” specifically, “whether the revised plan provides adequate compensation to the CLECs for service failures by BellSouth.” FDN Protest, ¶ 9. As an initial matter, the purpose of the SQM/SEEM plan is not to compensate CLECs or otherwise function as a revenue stream for CLECs. Accordingly, whether or not the SQM/SEEM plan “provides adequate compensation to the CLECs” is irrelevant. As stated by the Commission in the first page of the *PAA Order*, “we are vested with jurisdiction over this matter pursuant to Sections 364.01(3) and (4)(g), Florida Statutes.” Indeed, the Commission is vested with jurisdiction to: [e]nsure that all providers of telecommunications services are treated fairly.” Section 364.01(4)(g). Fair treatment, from an SQM/SEEM perspective, means implementing a Performance Assessment Plan that ensures that *non-discriminatory performance is provided to all CLECs*. As such, the level of SEEM payments that a particular CLEC (such as FDN) may receive under the Agreed Plan is irrelevant and outside the scope of Sections 364.01(3) and (4)(g), Florida Statutes. Stated differently, the SQM/SEEM plan is not

designed to guarantee a certain level of payments to CLECs. Rather, *the purpose of the SQM/SEEM plan is to ensure that BellSouth maintains a level of performance that gives CLECs a meaningful opportunity to compete in the local market.*

Indeed, the first paragraph of the Commission's *Final Order* recognizes that the SQM/SEEM plan is designed to monitor BellSouth's performance.

We opened this docket to develop permanent performance metrics for the ongoing evaluation of operations support systems (OSS) provided for alternative local exchange carriers' (ALECs) use by incumbent local exchange carriers (ILECs). Associated with the performance metrics is a monitoring and enforcement program that is to ensure that ALECs receive nondiscriminatory access to the ILEC's OSS. *Performance monitoring is necessary to ensure that ILECs are meeting their obligation to provide unbundled access, interconnection and resale to ALECs in a nondiscriminatory manner.*<sup>9</sup>

Throughout the *Final Order* the Commission reiterated that performance monitoring (accompanied by a self-executing enforcement mechanism) is the goal of the SQM/SEEM plan:

- *We find that the plan's initial purpose is to discern whether discrimination is occurring in the state of Florida on an aggregate basis.*<sup>10</sup>
- *We find that an effective enforcement mechanism plan is one that contains clearly articulated, predetermined measures and standards that encompass a comprehensive range of carrier-to-carrier performance.*<sup>11</sup>
- *An effective Performance Assessment Plan consists of a set of comprehensive, adequately defined measures, benchmarks and analogs, and an appropriate remedy plan.*<sup>12</sup>
- *We agree with Z-Tel witness Ford that BellSouth is obligated to provide ALECs with nondiscriminatory access to its OSS under the provisions of Section 251 of the Act.*<sup>13</sup>

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<sup>9</sup> *Final Order*, at p. 7 (emphasis added).

<sup>10</sup> *Final Order*, at 39.

<sup>11</sup> *Final Order*, at 87.

<sup>12</sup> *Final Order* at p. 117.

- *A Performance Assessment Plan is not a prerequisite to 271 approval, but a necessary tool to ensure that BellSouth is providing nondiscriminatory service.*<sup>14</sup>

Ensuring that BellSouth provides nondiscriminatory service to CLECs does not turn on the amount of remedy payments that BellSouth may pay to any particular CLEC in Florida.<sup>15</sup> Accordingly, the FDN Protest should be dismissed since “adequate compensation” to any particular CLEC is not the purpose of the SQM/SEEM plan and is irrelevant. As such, to the extent the FDN Protest alleges that the Commission should investigate the level of SEEM payments any particular CLEC may receive under the Agreed Plan, such allegations fail to state a claim for which relief can be granted.

Additionally, it is important to emphasize that SEEM payments are automatic. Such payments are made regardless of whether or not a CLEC sustained any damage associated with the performance that triggered a SEEM payment. Further, the SQM/SEEM plan is not the CLEC’s exclusive remedy for performance-related issues. Specifically, the current SEEM plan provides that [“t”]he application of the Tier-1 and Tier-2 Enforcement Mechanisms does not foreclose other legal and regulatory claims and remedies available to each ALEC.”<sup>16</sup> Other than replacing the acronym “ALEC” with “CLEC,” the Agreed Plan contains no change to SEEM § 4.2.1. (cited portions of the Agreed Plan are attached hereto, collectively, as Exhibit “C”).

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<sup>13</sup> *Final Order* at p. 140.

<sup>14</sup> *Id.*

<sup>15</sup> The Agreed Plan does not eliminate SEEM payments. Thus, even if the Commission considers the level of Tier-1 payments received by a specific CLEC to be an important aspect of the SQM/SEEM plan, FDN (or any other interested party) may raise SEEM-related concerns at the one-time six-month review to be held after implementation of the Agreed Plan. See *PAA Order* at 3.

<sup>16</sup> Section 4.2.1, Florida SEEM plan, Version 2.7, updated June 16, 2003.

Accordingly, nothing in the Agreed Plan prohibits a CLEC that believes it has sustained damages that are above and beyond the amount of any SEEM payment from exercising its legal and regulatory rights and remedies to seek recovery of such damages. As such, from a potential damage recovery perspective, the FDN Protest fails to allege facts sufficient to constitute a cause of action upon which relief can be granted because the Commission cannot grant any prospective relief based on conjecture and speculation and the Agreed Plan preserves all rights and remedies a CLEC may have to recover performance-related damages.

Moreover, from a practical perspective, the Commission approved a one-time six-month informal plan review following the implementation of the Agreed Plan. *See* Exhibit “C” (§ 3.1).

It is respectfully submitted that the six-month review is the appropriate time for FDN (or any other interested party) to raise concerns about the revised SQM/SEEM plan. To do so *before plan implementation*, as FDN has done, is premature and based on pure speculation. Moreover, premature complaining (without any basis to do so) arguably defeats the purpose of holding an initial six-month review of the revised SQM/SEEM plan.

**B. The Agreed Plan contains a transition mechanism acceptable to Staff.**

FDN asserts that “the settlement agreement does not contain a provision for transition to the revised plan.” FDN Protest, ¶ 12. Rather, FDN claims “the proposal is to flash cut to the new scheme.” *Id.* There is no arbitrary flash cut to a new plan. Under the current SQM/SEEM plan (and under the Agreed Plan), SEEM fees escalate if BellSouth continues to miss the same performance standard in consecutive months. Specifically, when it is determined that BellSouth

failed to meet the standard for a particular SEEM measure, the applicable fee depends on whether such failure occurred in one month, or in consecutive months. The “failed month” is the index that determines the applicable fee. For example, if BellSouth fails to meet a particular measurement for a specific CLEC for two (2) consecutive months, then the failed month counter is 2 and the applicable fee is from month 2 of the fee schedule included in Appendix A to the revised SEEM plan, *See* Exhibit “C.” Additionally, for a Tier 2 SEEM penalty to apply, BellSouth must miss the performance standard, at the CLEC aggregate level, for three (3) consecutive months.

To implement the Agreed Plan, BellSouth had originally planned to reset all failed month counters to zero. To address concerns about resetting the failed month counters to zero, BellSouth compromised its original position. The compromise “transition” mechanism accepted by the Staff is as follows: (i) all failed month counts of 1, 2, or 3 in the month preceding implementation of the revised SQM/SEEM plan would be reset to zero; (ii) all “failed month” counts that were greater than 3 in the month preceding implementation of the revised SQM/SEEM plan would not be reset. Accordingly, in the latter category, if a given measure failed in the first month of implementation of the revised SQM/SEEM plan, then the failed month counter would increase as if the revised SQM/SEEM plan had not been implemented.

With the above-explanation, FDN’s questions as set forth in paragraph 12 of the FDN Protest have been answered.

C. **FDN's generalized reference to State and Federal law fails to state any claim whatsoever, much less allege facts sufficient to state a cause of action upon which relief can be granted.**

Without identifying any aspect of the Agreed Plan or alleging any specific facts whatsoever, FDN makes the general statement that federal (47 U.S.C. § 271) and state law (Section 364.27, Florida Statutes) somehow requires reversal of the *PAA Order*. FDN Protest, ¶ 15. There is nothing in this portion of the FDN Protest that can survive a motion to dismiss because there are no specific facts alleged upon which relief may be granted. Again, the current SQM/SEEM plan contemplates periodic revisions, and prior SQM/SEEM revisions have been implemented via the periodic review process. The Agreed Plan is the product of an extensive, lengthy, and thorough review process. It is respectfully submitted that the Commission should not allow a party (in particular a party that chose not to participate in the vast majority of the periodic review process) to dismantle almost an entire year's worth of collaborative work and to frustrate the SQM/SEEM plan's review mechanism by simply making the general and unsupported allegation that the Commission's action somehow runs afoul of applicable law.

According to the FDN Protest, Section 364.27, Florida Statutes "directs the Commission to investigate companies for compliance with federal regulations and report to the FCC should the Commission find any company wanting in its compliance with federal law." FDN Protest, ¶ 15. Again, the federal law cited by FDN is Section 271. *Id.* From a Section 271 perspective, the SQM/SEEM plan is designed to prevent performance backsliding after BellSouth received long

distance authority in Florida. In granting BellSouth long distance authority in Florida, the FCC noted that:

[W]e find that the existing Service Performance Measurements and Enforcement (SEEM) plans currently in place for Florida and Tennessee provide assurance that these local markets will remain open after BellSouth receives section 271 authorization. . . . Although it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms, the Commission has previously found that the existence of a satisfactory performance monitoring and enforcement mechanism is probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority.<sup>17</sup>

In short, from a Section 271 perspective, the SQM/SEEM plan (although not a requirement) is designed to prevent performance backsliding, not guarantee remedy payments to CLECs. Accordingly, from a plan purpose standpoint, the views of the FCC and this Commission are substantially similar. That is, the purpose of the SQM/SEEM plan is to ensure a nondiscriminatory level of performance that affords CLECS a meaningful opportunity to compete in the local market, and for BellSouth to maintain such performance following receipt of Section 271 authority. The SQM/SEEM plan's purpose has nothing to do with the level of payments an individual CLEC (such as FDN) may receive under the plan. As such, the FDN Protest fails to state a claim upon which relief can be granted and the FDN Protest must be dismissed.

### **RESPONSE TO SPECIFIC ALLEGATIONS OF THE FDN PROTEST**

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<sup>17</sup> Memorandum Opinion and Order, *In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Authorization To Provide In-Region, InterLATA Services in Florida and Tennessee*, WC-Docket No. 02-307, FCC 02-331 (rel. December 19, 2002) (“*BellSouth Florida/Tennessee Order*”), at ¶ 167.

In an abundance of caution, BellSouth responds to the specifically numbered paragraphs of the FDN Protest as follows:

1. Paragraphs 1, 2, and 3 of the FDN Protest require no response from BellSouth.
2. BellSouth lacks information sufficient to form a belief as to the allegations in Paragraphs 4 and 5 of the FDN Protest. Accordingly, such allegations are denied.
3. The Commission's *PAA Order* speaks for itself and requires no response from BellSouth. All remaining allegations set forth in Paragraph 6 of the FDN Protest are denied.
4. Responding to the allegations set forth in Paragraph 7 of the FDN Protest, BellSouth admits only that FDN did not sign the settlement agreement that was approved in the *PAA Order*. All remaining allegations set forth in Paragraph 7 of the FDN Protest are denied.
5. BellSouth denies the allegations in Paragraphs 8 and 9 of the FDN Protest.
6. To the extent that the allegations of Paragraph 10 of the FDN Protest requires any response from BellSouth, such allegations are denied.
7. Paragraph 11 of the FDN Protest requires no response from BellSouth.
8. BellSouth denies the allegations in Paragraphs 12 and 13 of the FDN Protest.
9. The quoted portion of the *PAA Order* that is contained in Paragraph 14 of the FDN Protest speaks for itself and requires no response from BellSouth.
10. The cited provision of federal law, state law, and the *PAA Order* that are set forth in Paragraph 15 of the FDN Protest speak for themselves and require no response from

BellSouth. Notwithstanding the foregoing, BellSouth denies that the Commission has taken any action that requires reversal.

11. Paragraph 16 of the FDN Protest requires no response from BellSouth.

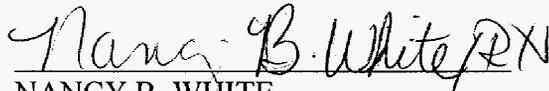
12. Paragraph 17 of the FDN Protest requires no response from BellSouth.

13. Paragraph 18 of the FDN Protest contains no specific factual allegations and thus requires no response from BellSouth.

14. Any allegation of the FDN Protest not expressly admitted herein is denied.

WHEREFORE, for the reasons set forth herein, BellSouth respectfully requests for the Commission to dismiss the FDN Protest and to allow the Agreed Plan to be implemented in July 2005.

Respectfully submitted this 14<sup>th</sup> day of June 2005.



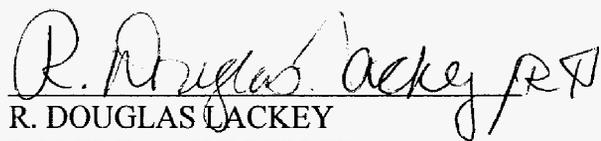
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# Exhibit A

## 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.<sup>1</sup> 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

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<sup>1</sup> 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

<sup>2</sup> 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
	2.0% <sup>3</sup>	
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

<sup>3</sup> 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
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.

## SEEM Staff Strawman, 2/16/05 Edition

### 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 would 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.<sup>1</sup> 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.

### Delta and Psi

Initially, staff had anticipated delaying the determination of delta and psi until a strawman had been accepted by both parties. However, based on feedback to date, staff believes that the decisions on delta and psi will be integral to acceptance and must be addressed at this time. The values of psi and delta are business decisions, not technical issues. These values determine how much of a difference in the sample means/proportions is deemed material. The CLECs have requested that the current delta function be retained; however, they have shown some willingness to accept a fixed delta of no more than 0.5. BellSouth has stated that the current delta function is unacceptable due to the small delta for large volumes and has suggested a fixed delta value of 1.0. Practically speaking, with the current delta function, the materiality determination is overly sensitive at large volumes. At a volume of 500 (where delta is approximately 0.2), only 54% of the wholesale data points could exceed the retail sample mean and still result in a submeasure failure. This small deviation from 50% effectively equates slight differences with discrimination. Staff does not believe that this result is reasonable for pass/fail determinations. Additionally, BellSouth has indicated that any delta value lower than 0.5 for these large volumes would be unacceptable. On the other hand, the CLECs have concerns with a large delta value. Staff finds this argument compelling as well, since at large volumes and a fixed delta of 1.0, BellSouth would not fail even with 65% of the wholesale data points exceeding the retail mean. However, since the CLECs seem willing to accept a fixed delta value of 0.5, staff would like to

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<sup>1</sup> 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.

offer this as a compromise to the parties. Although both parties may not fully accept this value, both appear to accept a value of 0.5 in at least some situations.

Finally, the value of  $\psi$  for proportion measures must also be specified. BellSouth indicated that a fixed value for  $\psi$  would be preferred here as well, but did not provide a value in its filing. The CLECs have suggested that if the delta function is retained, then  $\psi$  need not be changed either. However, in proposing delta as a fixed value, then a fixed value of  $\psi$  must also be chosen. Staff would recommend that the parties work together to choose a value of  $\psi$  analogous to the fixed delta value of 0.5. If additional guidance is needed, staff can facilitate discussions with the parties.

### 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 are less disparate to be corrected, while leaving those that are more 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) & Development of Fees

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 (i.e., the "detection" point), there is a statistically significant and material disparity between BellSouth's wholesale and retail performance. Between the BCV and zero (i.e., the "parity" point), the difference between BellSouth's wholesale and retail performance does not reach the statistically significant and material threshold, but could nonetheless constitute a lesser form of disparity. Staff notes that the truncated z is a combination of negative z-scores, which indicates varying degrees of disparity.

According to BellSouth, cell correction should only be performed until the truncated z reaches the BCV. BellSouth does not believe that cell correction and associated payments are appropriate in the region between the BCV and zero. In support of its position, BellSouth provides several reasons which include: there is a high degree of uncertainty that a failure occurred in the region between the BCV and zero; the materiality determination should be the same for the pass/fail determination and for the calculation of penalties; error balancing would be compromised; and those cells in which BellSouth provided better service have been truncated and thus not considered.

According to the CLECs, any count of disparate transactions should include the region between the BCV and zero. If cell correction is limited to merely reaching the BCV, the CLECs believe this would condone all but the most egregious instances of discrimination.

While both parties have good arguments for their positions, staff does not fully endorse either one. In the region between the BCV and zero, the difference between BellSouth's wholesale and retail performance does not rise to the statistically significant and material threshold that is used in the pass/fail determination. Staff is concerned, however, about completely disregarding transactions in this range since there is a reasonable chance that discrimination has occurred. Also, once a failure is detected, staff prefers that the cell correction be sufficient to address plausible instances of discrimination, rather than achieve just a passing result. Staff offered the composite z approach, which would give credit for BellSouth's better service in the cell correction process and use the parity point, in the hopes of bridging this difference of opinion. BellSouth is not willing to consider the composite z approach without studying the dollar ramifications, and staff is hesitant to delay this process further to enable BellSouth to perform such a review. For that reason, staff focuses on the truncated z approach and the appropriate treatment of the region between the BCV and zero.

Staff does not believe that the materiality determination necessarily needs to be the same for the pass/fail determination and for the calculation of penalties. As mentioned above, once a failure is detected, staff believes the better course of action is to address plausible instances of discrimination, in addition to statistically significant and material disparity. Staff does share BellSouth's concern regarding truncation of cells where BellSouth provided better service. Due to this truncation, staff has some reservation about correcting cells until the truncated z reaches zero. To address this reservation and the fact that the statistically significant and material threshold is not reached in the region between the BCV and zero, staff believes that the fees should be commensurately lower.<sup>2</sup>

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 fall in the statistically significant and material category. 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. In the region between the BCV and zero, where there is less certainty of discrimination, staff believes that the fees should be significantly lower than those applicable in the region below the BCV.

For submeasures with benchmark standards, staff believes that the applicable fees should be those used for parity submeasures, in the region beyond the BCV. Staff reasons that with a

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<sup>2</sup> Staff has considered another alternative that would eliminate the perceived need to correct transactions in the region between the BCV and zero. Once a submeasure failure is detected, a second BCV could be calculated using a smaller value of delta (e.g., .25) than used in the pass/fail determination. By using this lower materiality threshold, staff believes that cell correction then could be restricted to the region below the second BCV. This approach could be superior, in concept, to paying reduced fees in the region between the first BCV and zero, and provides for a cell correction process that addresses less serious forms of disparity. Staff will explore this idea further if the parties express interest.

benchmark, a bright-line test is used for determining compliance, which replaces the statistically significant and material determination used for parity submeasures.

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

### 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 the Tier 1 fees should be differentiated based on whether the same submeasure fails at the CLEC aggregate level in the same month. If the CLEC aggregate test for the same submeasure fails, staff believes this indicates a systemic problem. For this reason, a lower fee schedule should be used when the CLEC aggregate test passes, and a higher fee schedule used when the CLEC aggregate test fails. In the region below the BCV, the fee should be substantial in order to provide a sufficient incentive for BellSouth to cure the systemic problem.

Table 1 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 fail at the CLEC aggregate level, then transactions that require correction to reach the BCV are paid at three times the “commercial” fee, and those additional transactions that when corrected bring the truncated z to zero, are paid at two-thirds the “commercial” fee. If the CLEC aggregate test passes, the applicable fees would be half of those that apply under the CLEC aggregate failure scenario.

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

CLEC Aggregate Performance	Below BCV	Between BCV and 0
Passes	(“Commercial” fee) <sup>(1/2)</sup>	(“Commercial” fee) <sup>(1/3)</sup>
Fails	(“Commercial” fee)(3)	(“Commercial” fee) <sup>(2/3)</sup>

### Escalation

Escalation 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. Both BellSouth and the CLECs have stated their willingness to accept a system of escalation that mirrors the current month-to-month

relationships in the Georgia Fee Schedule. By using the Georgia fee relationships, the pattern of escalation will vary by submeasure, which differs from the result that would have been obtained by applying escalation factors. Table 2, includes the escalation based on the Georgia Fee relationships.

### Fee Schedules and Computations

The cell correction, overall performance, and escalation features all affect determination of the applicable Tier 1 fees to be paid for any submeasure failure. Using the “commercial” fee as a starting point, staff first shows the escalation by month, which corresponds to the number of months that a given CLEC has experienced a failure in a given submeasure. Once the corresponding fee has been selected from Table 3 below, staff next shows how Table 2 is applied to calculate the affected transactions and associated fees.

**Table 2: Commercial Schedule for Tier 1 Per Transaction Fee Determination**

	M1	M2	M3	M4	M5	M6
OSS/Pre-Ordering	\$ 10	\$ 15	\$ 20	\$ 25	\$ 30	\$ 35
Ordering	\$ 20	\$ 25	\$ 30	\$ 35	\$ 40	\$ 45
Flow Through	\$ 40	\$ 45	\$ 50	\$ 55	\$ 60	\$ 65
Provisioning – Resale	\$ 40	\$ 50	\$ 70	\$ 100	\$ 130	\$ 200
Provisioning – UNE	\$ 115	\$ 130	\$ 145	\$ 160	\$ 190	\$ 230
Provisioning – UNE-P	\$ 55	\$ 60	\$ 70	\$ 75	\$ 90	\$ 110
Maintenance and Repair – Resale	\$ 40	\$ 50	\$ 70	\$ 100	\$ 130	\$ 200
Maintenance and Repair – UNE	\$ 115	\$ 130	\$ 145	\$ 160	\$ 190	\$ 230
Maintenance and Repair – UNE-P	\$ 55	\$ 60	\$ 70	\$ 75	\$ 90	\$ 110
LNP	\$ 115	\$ 190	\$ 385	\$ 460	\$ 535	\$ 615
Billing – BIA	2% <sup>3</sup>					
Billing – BIT	\$ 7	\$ 7	\$ 7	\$ 7	\$ 7	\$ 7
Change Management	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
IC Trunks	\$ 25	\$ 30	\$ 45	\$ 65	\$ 80	\$ 125
Collocation	\$ 3,165	\$ 3,165	\$ 3,165	\$ 3,165	\$ 3,165	\$ 3,165

Consistent with Table 2, where the CLEC aggregate test passes, staff proposes that for those transactions that require correction to reach the BCV, the per transaction fee should be 1 ½ times the “commercial” fee. For those additional transactions that bring the truncated z from the BCV to zero, the fee should be a third of the “commercial” fee. The following example is intended to illustrate the calculation process, but should not be used to draw any other inferences.

<sup>3</sup> Reflects percent interest to be paid on adjusted amounts.

**Table 3: Cell-Level Data<sup>4</sup>**

Cell	CLEC Misses	Z Score	Rank	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	<b>BCV: -0.96651</b>	

**Table 4: Illustrative Example**

Cell #'s corrected	Z* from Table 3	Total Corrected Transactions
1 – 4	-1.13887	10
1 – 4 & part of 5	BCV -0.96651	11 Transactions paid at 1/3 times “commercial” fee: 11
1 – 5	-0.29134	14
1 – 5	-0.29134	14
1 – 5 & part of 6	0.00000	16 Transactions paid at 1/3 of the “commercial” fee: 5 (= 16 – 11)
1 – 6	0.91925	21

The data in this example was taken from the Percent Missed Installation Appointments metric, in the Provisioning-UNE domain; therefore, the per transaction amount from Table 3 would be \$115. Since 11 transactions corrected the truncated z to the BCV, then 11 \* \$115 \* 3/2 = \$1,897.50 and since 5 more corrected transactions brought the truncated z up to 0, then 5 \* \$115 \* 1/3 = \$191.67, for a total of \$2,089.17.

The Tier 2 fee schedule proposed below is derived from BST’s proposed SEEM plan, but recast to reflect only Florida rates. The Tier 2 fees that would be paid below the BCV are calculated at 4.5 times the “commercial” rate, and those that would be paid between the BCV and zero are at the “commercial” rate. The fees were rounded up to the nearest \$5 for ease of calculation. The calculations under Tier 2 should be performed analogous to those done in Tier 1.

**Table 5: Tier 2 Per Transaction Fee Determination**

Performance Measurement	Below BCV	Between BCV and 0
OSS/Pre-Ordering	\$ 45	\$ 10
Ordering	\$ 90	\$ 20
Flow Through	\$ 180	\$ 40
Provisioning – Resale	\$ 180	\$ 40
Provisioning – UNE	\$ 520	\$ 115
Provisioning – UNE-P	\$ 250	\$ 55
Maintenance and Repair – Resale	\$ 180	\$ 40
Maintenance and Repair – UNE	\$ 520	\$ 115
Maintenance and Repair – UNE-P	\$ 250	\$ 55
LNP	\$ 520	\$ 115
Billing – BIA	9.0% <sup>5</sup>	2% <sup>5</sup>
Billing – BIT	\$ 35	\$ 7
Change Management	\$ 4,500	\$ 1,000
IC Trunks	\$ 115	\$ 25
Collocation	\$ 14,250	\$ 3,165

<sup>4</sup> The truncated z calculations may not be exactly correct since not all the data is provided in this table.

<sup>5</sup> Reflects percent interest to be paid on adjusted amounts.

### 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, 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 submetric, 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.

### 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 its 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.

# Exhibit B

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
	<p>Reporting                      2.1: ...with BellSouth's SQMs <u>and pay penalties in accordance with the applicable SEEMs, which are posted on the Performance Measurement Reports website.</u></p>	<p>Clarification and correction.</p>	<p>&gt; CLECs AGREE</p>	<p>&gt; Parties agree.                      &gt; Staff accepts BellSouth's redline and recommends that Section 2 Reporting, item 2.1 should state:                       ... and pay penalties in accordance with the applicable SEEMs, which are posted on the Performance Measurement Reports website.</p>
	<p>Reporting                      2.2: BellSouth will also provide electronic access to the <del>available</del> raw data underlying the SQMs.</p>	<p>Correction.</p>	<p>&gt; CLECs AGREE</p>	<p>&gt; Parties agree.                      &gt; Staff accepts BellSouth's redline and recommends that section 2 Reporting item 2.2 should state:                       BellSouth will also provide electronic access to the raw data underlying the SQMs.</p>
	<p>Reporting                      2.4: Final validated SEEM reports will be posted on the Performance <u>Measurements Reports website on the 15th day of the month,</u> following the <u>posting of final validated SQM reports for that data month or the first business day thereafter.</u></p>	<p>Clarification</p>	<p>&gt; CLECs AGREE                      &gt; provided the language change does not negate responsibility to provide SEEM payments 15 days after month that succeeds the data month.</p>	<p>&gt; Parties agree.                      &gt; Staff accepts BellSouth's redline and recommends that Section 2 Reporting, item 2.4 should state:                       Final validated SEEM reports will be posted on the Performance Measurements Reports website on the 15th of the month, following the posting of final validated SQM reports for that data month or the first business day thereafter.</p>
	<p>Reporting                      2.5 BellSouth shall pay penalties to the Commission, in the aggregate, for all lte SQM reports in the amount of \$2000 per day. Such <del>penalty payment</del> shall be made to the Commission for deposit into the state General Revenue Fund within fifteen (15) calendar days of the end of the reporting month in which the</p>			<p>&gt; Staff agrees with BST's position with modifications as suggested by staff.                      &gt; Staff recommends that Section 2 Reporting, item 2.5 should state:                       BellSouth shall pay penalties to the Commission, in the aggregate, for all lte SQM <u>and SEEM</u> reports in the amount of \$2000 per day. Such payment shall be made to the Commission for deposit into</p>

Rate	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
	<p>late publication of the report occurs.</p> <p>2.6: BellSouth shall pay penalties to the Commission, in the aggregate, for all <del>incomplete or inaccurate</del> <u>reposted</u> SQM reports in the amount of \$400 per day. See Appendix G for definition of "reposted."</p>	<p>Only changes that are significant enough to trigger reposting according to the criteria could have a meaningful effect on data accuracy.</p>	<p>CLECs DISAGREE</p> <ul style="list-style-type: none"> <li>➤ Due to the criteria associated with reposting determinations, sanctions for incomplete or inaccurate reporting could be mitigated. BellSouth has provided no rationale for elimination of their obligation to pay penalties for incomplete or inaccurate reporting. The penalty is intended to motivate BellSouth to be complete in its reporting. BellSouth should not be allowed to hide bad results through an incomplete or inaccurate report.</li> </ul>	<p>the state General Revenue Fund within fifteen (15) calendar days of the end of the reporting month in which the late publication of the report occurs.</p> <hr/> <ul style="list-style-type: none"> <li>➤ Staff recommends that Section 2 Reporting, item 2.6 should state:</li> </ul> <p>BellSouth shall pay penalties to the Commission, in the aggregate, for all <u>reposted SQM and SEEM</u> reports in the amount of \$400 per day. The circumstances which may necessitate a reposting of SQM reports are detailed in Appendix G, Reposting of Performance Data and Recalculation of SEEM Payments. Such payments shall be made to the Commission for deposit into the state General Revenue Fund within fifteen (15) calendar days of the final publication date of the report or the report revision date.</p>
	<p>Reporting</p> <p>2.7: Tier II SEEMS payments and Administrative fines and penalties for late, <del>incomplete,</del> and reposted reports will be sent via Federal Express to the Commission. Checks and the accompanying transmittal letter will be postmarked on-or before the 15th of the month <u>or the first business day</u> thereafter.</p>	<p>To the extent that posted performance measurement reports are incomplete, the Reposting Policy covers the requirements to repost the data, and consequently to pay associated penalties. Accordingly, there is no need to reflect separately a penalty associated with incomplete reports. Wording is also provided to clarify that the due day for the postmarked transmittal of payments is based on the first relevant business day based on standard business practices.</p>	<ul style="list-style-type: none"> <li>➤ CLECs DISAGREE IN PART AND AGREE IN PART</li> <li>➤ CLECs disagree with the elimination of penalties for incomplete reporting. It is possible to have an incomplete report that might not trigger the reposting requirement, yet either way the CLECs are still disadvantaged by not having complete data. An incomplete report may even meet the reposting criteria and still not get reposted, thus incurring no penalty. CLECs can agree with the payment terms, but would prefer the modified language to be as follows: or the first business day thereafter, "when the 15<sup>th</sup> falls on a non-business day."</li> </ul>	<ul style="list-style-type: none"> <li>➤ Staff agrees with BST's position with modified language as suggested by CLECs.</li> <li>➤ Staff recommends that Section 2 Reporting, item 2.7 should be revised to state:</li> </ul> <p>Tier II SEEMS payments and Administrative fines and penalties for late, and reposted reports will be sent <del>via Federal Express</del> to the Commission. Checks and the accompanying transmittal letter will be postmarked on-or before the 15th of the month or the first business day thereafter, when the 15<sup>th</sup> falls on a non-business day.</p>
	<p>Reporting</p> <p>2.9: BellSouth will provide</p>	<p>Language is applicable to performance measurement data posting as required</p>	<ul style="list-style-type: none"> <li>➤ CLECs Disagree.</li> <li>➤ CLECs disagree that only applies to</li> </ul>	<ul style="list-style-type: none"> <li>➤ Staff agrees with CLEC position.</li> <li>➤ Staff recommends that Section 2</li> </ul>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
<p><del>documentation of late and incomplete occurrences during the reporting month that the data is posted to the website.</del></p>	<p>by the SQM only and not SEEM.</p>	<p>SQM. Requirement is currently included in the SEEM Administrative Plan. CLECs are entitled to information about inaccurate and late SEEM reports as well as SQM reports. If BellSouth does not provide the documentation, CLECs have no way of being noticed that the report's content were incomplete. The omission may not be visibly noticeable.</p>	<p>Reporting item 2.9 should state:  BellSouth will provide documentation of late and reposted SQM and SEEM Reports during the reporting month that the data is posted to the website. These notations may be viewed on the Performance Measurements website from the PMAP home page on the Current Site Updates link.</p>
<p>Review of Measurements and Enforcement Mechanisms 3.1: BellSouth will participate in six-month <u>annual</u> review cycles starting <del>six months after one year from</del> the date of the Commission order.</p>	<p>The review process lasts for several months and a series of six-month review cycles is not feasible. Therefore, BellSouth propose an annual review cycle, which may be more manageable for all parties involved.</p>	<p>&gt; CLECs AGREE with the following addition. Any party may petition for a review if special problems result from the last Order to commence all or a partial review before the annual but no sooner than six months after the last Order.</p>	<p>&gt; Staff agrees with BST's position. &gt; Staff accepts BellSouth's redline and recommends that Section 3 Review of Measurements and Enforcement Mechanism, item 3.1 should state:  BellSouth will participate in annual review cycles. <del>starting one year from the date of the Commission order.</del> A collaborative work group, which will include BellSouth, interested CLECs and the Commission will review the Performance Assessment Plan for additions, deletions or other modifications.</p>
<p><u>Modification to Measures Review of Measurements and Enforcement Mechanisms</u> 3.2 BellSouth and the ALECs shall file any proposed revisions to the SEEM plan one month prior to the beginning of each review period.</p>	<p>Unnecessary because Commission or Staff will establish schedule.</p>	<p>&gt; CLECs DISAGREE Given the limited CLEC resources, this entry helps to facilitate required planning to ensure that the comments are prepared in a timely manner.</p>	<p>&gt; Upon further discussion Parties agree to delete. &gt; Staff accepts BellSouth's redline and recommends that section 3 Review Of Measurements and Enforcement Mechanisms, item 3.2 be deleted.</p>
<p><u>Modification to Measures Review of Measurements and Enforcement Mechanisms</u> 3.3 <del>From time to time, BellSouth may be ordered by the Florida Public Service Commission to modify or amend the SQMs or SEEMs. Nothing will preclude any party from participating in any</del></p>	<p>Superfluous</p>	<p>&gt; CLECs DISAGREE. &gt; This language is essential. This language provides the staff with the flexibility to exercise its authority to recommend changes outside the proposed annual review process such as when BellSouth's performance dictates.</p>	<p>&gt; Upon further discussion Parties agree to delete. &gt; Staff accepts BellSouth's redline and recommends that section 3 Review Of Measurements and Enforcement Mechanisms, item 3.3 be deleted.</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
<del>proceeding involving BellSouth's SQMs or SEEMs from advocating that those measures be modified.</del>			
<p>Enforcement Mechanisms Definitions 4.1.1 <i>Enforcement Measurement</i></p> <p style="text-align: center;"><del>within the SEEM</del></p>	<p>Correction to reflect removal of SEEM submetric identification from SQM.</p>	<p>&gt; CLECs DISAGREE. &gt; CLECs need clarification and do not understand the proposed change.</p>	<p>&gt; Staff agrees with CLECs position. &gt; Staff recommends that the Section 4.1 Enforcement Mechanisms Definitions, item 4.1.1 original language should be retained:</p> <p><i>Enforcement Measurement Elements – performance measurements identified as SEEM measurements within the SEEM Plan.</i></p>
<p>Definitions 4.1.2 <i>Enforcement Measurement Benchmark compliance – competitive level of performance established by the Commission used to evaluate the performance of BellSouth and each ALEC for CLECs for penalties where no analogous retail process, product or service is feasible.</i></p>		<p>&gt; If BellSouth leaves in established by the Commission.</p>	<p>&gt; Parties Agree with modified language as suggested by CLECs. &gt; Staff recommends that Section 4.1 Enforcement Mechanisms Definitions, item 4.1.2 should state:</p> <p><i>Enforcement Measurement Benchmark compliance –level of performance established by the Commission used to evaluate the performance of BellSouth for CLECs where no analogous retail process, product or service is feasible.</i></p>
<p>Enforcement Mechanisms Definitions 4.1.3 <i>Enforcement Measurement Retail Analog Compliance – comparing performance levels provided to BellSouth retail customers with performance levels provided by BellSouth to the CLEC ALEC customer for penalties measures where retail analogs apply.</i></p>	<p>Clarification and correction.</p>	<p>&gt; CLECs AGREE</p>	<p>&gt; Parties Agree &gt; Staff accepts BellSouth's redline and recommends that Section 4.1 Enforcement Mechanisms Definitions, item 4.1.3 should state:</p> <p><i>Enforcement Measurement Retail Analog Compliance – comparing performance levels provided to BellSouth retail customers with performance levels provided by BellSouth to the CLEC customer for -measures where retail analogs apply.</i></p>
<p>Enforcement Mechanisms Definitions</p>	<p>Correction.</p>	<p>&gt; CLECs AGREE</p>	<p>&gt; Parties Agree &gt; Staff accepts BellSouth's redline and</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
	<p>4.1.4 <i>Test Statistic and Balancing Critical Value</i> – means by which enforcement will be determined using statistically valid equations. The Test Statistic and Balancing Critical Value properties are set forth in Appendix C, <del>incorporated herein by this reference</del> <u>D. Statistical Formulas and Technical Description.</u></p>			<p>recommends that Section 4 Enforcement Mechanisms Definitions, item 4.1.5 should state:</p> <p><i>Test Statistic and Balancing Critical Value</i> – means by which enforcement will be determined using statistically valid equations. The Test Statistic and Balancing Critical Value properties are set forth in Appendix D, Statistical Formulas and Technical Description.</p>
10	<p>Enforcement Mechanisms Definitions Section 4.1.5: Cell - ...all BellSouth retail ISDN (POTS) services, for residential customers, ...</p>	<p>Clarification and Correction</p>	<ul style="list-style-type: none"> <li>➤ CLECs DISAGREE</li> <li>➤ This change does not represent a clarification or correction. ISDN does represent a different cell level of disaggregation.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Upon further discussion parties agree.</li> <li>➤ Staff accepts BellSouth's redline and recommends that Section 4.1 Enforcement Mechanisms Definitions, item 4.1.5 should state:</li> </ul> <p>Cell-grouping of transactions at which like-to-like comparisons are made. For example, all BellSouth retail (POTS) services, for residential customers, requiring a dispatch in a particular wire center, at a particular point in time will be compared directly to CLEC resold services for residential customers, requiring a dispatch, in the same wire center, at a similar point in time. When determining compliance, these cells can have a positive or negative Test Statistic. See Appendix D, Statistical Formulas and Technical Description, attached.</p>
15	<p>Enforcement Mechanisms Definitions 4.1.8 <i>Tier-2 Enforcement Mechanisms</i> – assessments paid directly to the Florida Public Service Commission or its designee. Tier 2 Enforcement Mechanisms are triggered by three consecutive monthly failures in Tier 2</p>	<p>Clarification and correction.</p>	<ul style="list-style-type: none"> <li>• CLECS DISAGREE</li> <li>• The proposed change adds confusion to the definition and does not delineate the fact that compliance is determined at the submetric level. CLECs recommend replacing deleted language with “of a Tier-2 submetric”</li> </ul>	<p>Staff recommends that Section 4.1 Enforcement Mechanisms Definitions, tem 4.1.5 should revised to state</p> <p><i>Tier-2 Enforcement Mechanisms</i> – assessments paid directly to the Florida Public Service Commission or its designee. Tier 2 Enforcement Mechanisms are riggered by three consecutive monthly</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
	<p>enforcement measurement elements in which BellSouth performance is out of compliance or does not meet the benchmarks for the aggregate of all CLEC ALEC data as calculated by BellSouth for a particular Tier-2 Enforcement Measurement Element.</p>			<p>failures at the submetric level in which BellSouth performance is out of compliance or does not meet the benchmarks for the aggregate of all CLEC data..</p>
16	<p>Enforcement Mechanisms Definitions                      4.1.9. <del>Affiliate — person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10Percent.</del></p>	<p>This term is not used in applying the methodology of the Plan therefore the definition is not needed.</p>	<p>&gt; CLECs DISAGREE                      &gt; The definition should be retained such that a common understanding, pertaining to designated data, that should be excluded in determining Tier 1 @ Tier 2 compliance. The PSC d decision stated that, “We will monitor the BellSouth ALEC affiliate performance metrics results provided each month until an assessment can be made of the data’s relevance and significance. At this time, no use should be made of the affiliate data for determining Tier 1 or Tier 2 compliance.” The definition used for affiliate comes from the 1996 Telecommunications Act, which also prohibits the ILECs from discriminating in favor of their affiliates as well as their own retail customers. The definition used for affiliate comes from the 1996 Telecommunications Act, which also prohibits the ILECs from discriminating in favor of their affiliates as well as their own retail customers.</p>	<p>&gt; Staff agrees with CLECs position.                      &gt; Staff recommends that the Section 4.1 Enforcement Mechanisms Definitions, item 4.9 original language should be retained:                       Affiliate – person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent.</p>
17	<p>Enforcement Mechanisms Definitions                      4.1.9: <u>Affected Volume – that proportion of the total impacted CLEC volume or CLEC Aggregate volume for which remedies will be paid.</u></p>	<p>New definition required for operation of proposed transaction-based remedy mechanism.</p>	<p>&gt; CLECs DISAGREE.                      &gt; CLECs oppose a transaction based plan. See technical matrix to be filed on November 15 for more information ,                      &gt; Further, the use of the word “proportion” is inappropriate, and the word “quantity” should be used instead.</p>	<p>&gt; Staff agrees with BST’s position with modified language as suggested by CLECs.                      &gt; Staff recommends that Section 4.1 Enforcement Mechanisms Definitions, item 4.1.9 should be item 4.1.10 and be revised to state:</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
				4.1.10 Affected Volume – that quantity of the total impacted CLEC volume or CLEC Aggregate volume for which remedies will be paid.
	<p>Enforcement Mechanisms Definitions                      4.1.10 <u>Parity Gap</u> – refers to the <u>incremental departure from a compliant-level of service. This is also referred to as “diff” in Appendix D. Statistical Formulas and Technical Description.</u></p>	<p>New definition required for operation of proposed transaction-based remedy mechanism.</p>	<ul style="list-style-type: none"> <li>➢ CLECs DISAGREE</li> <li>➢ CLECs disagree to inclusion of the proposed definition given that there is no mention of “parity gap” in the proposed plan.</li> </ul>	<ul style="list-style-type: none"> <li>➢ Upon further discussion parties agree to delete.</li> <li>➢ Staff recommends that Section 4.1 Enforcement Mechanisms Definitions, item 4.1.10 Parity Gap should be deleted.</li> </ul>
	<p>Enforcement Mechanisms Application 4.2.1                      The application of the Tier1- and Tier-2 Enforcement Mechanisms does not foreclose other legal and regulatory claims and remedies available to each CLECALEC.</p>	<p>Correction.</p>	<ul style="list-style-type: none"> <li>➢ CLECs Agree</li> </ul>	<ul style="list-style-type: none"> <li>➢ Parties Agree</li> <li>➢ Staff accepts BellSouth’s redline and recommends that Section 4.2 Enforcement Mechanisms Application, item 4.2.1 should state:</li> </ul> <p>The application of the Tier1- and Tier-2 Enforcement Mechanisms does not foreclose other legal and regulatory claims and remedies available to each CLEC.</p>
	<p>Enforcement Mechanisms Application                      4.2.2: The payment of any Tier-1 Enforcement Mechanism to a CLEC shall be credited against any liability associated with or related to BellSouth’s service performance and the payment of any Tier 1 or Tier-2 Enforcement Mechanisms shall not be used as evidence that BellSouth has not complied with or has violated any state or federal law or regulation.</p> <p>4.2.3 It is not the intent of the Parties that BellSouth be liable for</p>	<p>These changes are to avoid situations where the CLECs are paid multiple times for problems associated with the same transaction or occurrence. Certainly the purpose of plans like the SEEM plan is not to unduly penalize BellSouth and unjustly enrich the CLECs.</p> <p>Similarly, Tier-2 penalties, which are paid to the Commission, should not represent dual assessments against BellSouth for the same performance related problems.</p> <p>Clarification to remove potential controversy about whether the</p>	<ul style="list-style-type: none"> <li>➢ CLECs DISAGREE</li> <li>➢ This change is unnecessary. Moreover, what is suggested violates public policy. The SEEM payments are not related or connected to civil damages; they are a penalty imposed by the regulatory agency to deter anti-competitive behavior. To allow such penalty payments to be offset against civil damages is void and against public policy.</li> <li>➢ “Any liability associated with or related to BellSouth’s service performance” pertains to civil damages, and this Commission does not have the jurisdiction to limit in advance any remedies available to a CLEC in a</li> </ul>	<ul style="list-style-type: none"> <li>➢ Staff recommends that section 4.2 Enforcement Mechanisms Application, items 4.2.2 be revised to state:</li> </ul> <p>Payment of any Tier-1 or Tier-2 Enforcement Mechanisms shall not be considered as an admission against interest or an admission of liability or culpability in any legal, regulatory or other preceeding relating to BellSouth’s performance and the payment of any Tier-1 or Tier-2 Enforcement Mechanisms shall not be used as evidence that BellSouth has not complied with or has violated any state or federal law or regulation.</p> <ul style="list-style-type: none"> <li>➢ Staff recommends that Section 2</li> </ul>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
<p><u>both Tier-2 Enforcement Mechanisms and any other assessments or sanctions imposed by the Commission. CLECs will not oppose any effort by BellSouth to set off Tier-2 Enforcement Mechanisms from any assessment imposed by the Commission.</u></p> <p><u>4.2.4 The Enforcement Mechanisms contained in this Plan have been provided by BellSouth on a voluntary basis in order to maintain compliance between BellSouth and each CLEC. As a result, CLECs may not use the existence of this section or any payments of any Tier-1 or Tier-2 Enforcement Mechanisms under this section as evidence that BellSouth has not complied with or has violated any state or federal law or regulation.</u></p> <p>12/6/04 CAI #1 12/6/04 BAI #1</p> <p>3/8/05 BAI #1</p> <p>4.2.2 Payment of any Tier-1 or Tier-2 Enforcement Mechanisms shall not be considered as an admission against interest or an admission of liability or culpability in any legal, regulatory or other proceeding relating to BellSouth's performance and the payment of any Tier-1 or Tier-2</p>	<p>proposed SEEM can be mandated.</p>	<p>judicial proceeding against BellSouth.</p> <ul style="list-style-type: none"> <li>➤ The proposed set off of Tier-2 Enforcement Mechanisms is inappropriate for the same reasons. BellSouth's desire to dilute the deterrent effect of these penalty payments cannot be sanctioned.</li> <li>➤ This addition to address a "potential controversy" is unnecessary and indeed provokes that dispute. It is an inaccurate statement and accordingly should not be included.</li> </ul> <p>The FL PSC also has previously ruled against such an offset when BellSouth tried with Supra Communications and Information Systems, Inc.: "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 Order No. PSC-02-1082-FOF-TP ➤ Issued: August 8, 2002 ➤ The FL PSC found that "Allowing BellSouth to offset would defeat the self-effectuating nature of the Plan...The most effective way for Bellsouth to avoid payments to Supra during resolution of the billing dispute is by ensuring that it meets all its metrics".</p>	<p>Reporting, item 4.2.3 be deleted.</p> <hr/> <p>➤ Staff recommends that Section 2 Reporting, item 4.2.4 be deleted.</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
<p><u>Enforcement Mechanisms shall not be used as evidence that BellSouth has not complied with or has violated any state or federal law or regulation. The payment of any Tier-1 Enforcement Mechanism to a CLEC shall be credited against any liability associated with or related to BellSouth's service performance.</u></p> <p>4.2.4 The Enforcement Mechanisms contained in this Plan have been provided by BellSouth on a voluntary basis in order to maintain compliance between BellSouth and each CLEC. As a result, CLECs may not use the existence of this section or any payments of any Tier 1 or Tier 2 Enforcement Mechanisms under this section as evidence that BellSouth has not complied with or violated any state or federal law or regulation.</p>			
<p>21 Enforcement Mechanisms Methodology 4.3.1.1 All OCNs and ACNAs for individual CLECs ALECs will be</p>	<p>Transaction-based plan rather than a measure-based plan is proposed.</p>	<p>&gt; CLECs DISAGREE. CLECs oppose a transaction based plan. See Row 1 of Technical Matrix to be filed on November 15.</p>	<p>&gt; To be determined &gt; Staff's strawman proposes a transaction-based plan. In the event that the Commission approves or the parties</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
consolidated for purposes of calculating <del>transaction</del> measure-based failures.			agree to a transaction-based plan, BellSouth's redline would be acceptable.
Enforcement Mechanisms	Correction.	<ul style="list-style-type: none"> <li>➢ CLECs AGREE.</li> </ul>	<ul style="list-style-type: none"> <li>➢ Parties Agree</li> <li>➢ Staff accepts BellSouth's redline and recommends that Section 4.3 Enforcement Mechanisms Methodology, item 4.3.1.2 should state:</li> </ul> <p>When a measurement has five or more transactions for the ALEC, calculations will be performed to determine remedies according to the methodology described in the remainder of the document.</p>
<p>Methodology 4.3.2 Tier-2 Enforcement Mechanisms will be triggered by BellSouth's failure to achieve applicable Enforcement Measurement Compliance or Enforcement Measurement Benchmarks for the State of Florida for given Enforcement Measurement Elements for three consecutive months. <del>The based upon the method of calculation is set forth in Appendix D, incorporated herein by this reference</del> <u>Statistical Formulas and Technical Description.</u></p>		<ul style="list-style-type: none"> <li>➢</li> </ul>	<ul style="list-style-type: none"> <li>➢ Parties Agree</li> <li>➢ Staff accepts BellSouth's redline and recommends that Section 4.3 Enforcement Mechanisms Methodology, item 4.3.2 should state:</li> </ul> <p>Tier-2 Enforcement Mechanisms will be triggered by BellSouth's failure to achieve applicable Enforcement Measurement Compliance or Enforcement Measurement Benchmarks for the State of Florida for given Enforcement Measurement Elements for three consecutive months. The method of calculation is set forth in Appendix D, Statistical Formulas and Technical Description. [specific contents of Appendix D to be determined]</p>
<p>Enforcement Mechanisms Methodology 4.3.2.1 Tier- 2 Enforcement Mechanisms apply, for an aggregate of all <del>CLEC ALEC</del> data generated by BellSouth, on a per <del>measurement</del></p>	See the discussion for section 4.3.1.3 above concerning the recommended change for Tier 1 from per-measure to a per-transaction based plan.	<ul style="list-style-type: none"> <li>➢ CLECs DISAGREE.</li> <li>➢ Issue of transaction basis vs. measurement to be discussed in technical matrix response. Question for BellSouth. What is the difference between "particular" and "each"?</li> </ul>	<ul style="list-style-type: none"> <li>➢ To be determined</li> <li>➢ Staff's strawman proposes a transaction-based plan. In the event that the Commission approves or the parties agree to a transaction-based plan, BellSouth's redline would be acceptable.</li> </ul>

Item	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
	<p><u>Enforcement Measurement Element each Enforcement Mechanism Element for which BellSouth has reported non-compliance.</u></p>			
25	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts 4.4.1 If BellSouth performance triggers an obligation to pay Tier-1 Enforcement Mechanisms to a <u>CLECALEC</u> or an obligation to remit Tier-2 Enforcement Mechanisms to the Commission or its designee, BellSouth shall make payment in the required amount by the <u>15th day of the second month following the month for which disparate treatment was incurred on the day upon which the final validated SEEM reports are posted on the Performance Measurements Reports website as set forth in Section 2.4 above.</u></p>	<p>Clarification and to ensure consistency.</p>	<p>➤ CLECs AGREE, subject to resolution of concerns raised in response to Section 2.4.</p>	<p>➤ Parties Agree                      ➤ Staff accepts BellSouth's redline and recommends that Section 4.4 Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts, item 4.4.1 should state:</p> <p>If BellSouth performance triggers an obligation to pay Tier-1 Enforcement Mechanisms to a CLEC or an obligation to remit Tier-2 Enforcement Mechanisms to the Commission or its designee, BellSouth shall make payment in the required amount on the day upon which the final validated SEEM reports are posted on the Performance Measurements Reports website as set forth in Section 2.4 above.</p>
26	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts 4.4.2 For each day after the due date that BellSouth fails to pay a <u>CLECALEC</u> the required amount, BellSouth will pay the <u>CLECALEC</u> 6% simple interest per annum.</p>	<p>Correction.</p>	<p>➤ CLECs AGREE.</p>	<p>➤ Parties Agree                      ➤ Staff accepts BellSouth's redline and recommends that Section 4.4 Enforcement Mechanisms Payment of Tier -1 and Tier-2 Amounts, item 4.4.2 should state:</p> <p>For each day after the due date that BellSouth fails to pay a CLEC the required amount, BellSouth will pay the CLEC 6% simple interest per annum.</p>
27	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts 4.4.3 For each day after the due date that BellSouth fails to pay the Tier-2 Enforcement Mechanisms, BellSouth will pay the Commission an additional \$1,000 per day.</p>		<p>➤ CLECs AGREE.</p>	<p>➤ Parties Agree                      ➤ Staff accepts BellSouth's redline and recommends that Section 4.4 Enforcement Mechanisms Payment of Tier -1 and Tier-2 Amounts, item 4.4.3 should state:</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
				For each day after the due date that BellSouth fails to pay the Tier-2 Enforcement Mechanisms, BellSouth will pay the Commission an additional \$1,000 per day.
18	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts                      4.4.4: ...within sixty (60) days after the <u>payment due date of the performance measurement report for which the obligation arose.</u>                      ...within thirty (30) days after its findings along with <del>6Percent%</del> simple interest per annum. <del>However, the ALEC shall be responsible for all administrative costs associated with resolution of disputes that result in no actual payment. Administrative costs are those reasonable costs incurred in the resolution of the disputed matter. Such costs would include, but not be limited to, postage, travel and lodging, communication expenses, and legal costs. If BellSouth and the ALEC have exhausted good faith negotiations and are still unable to reach a mutually agreeable settlement pertaining to the amount disputed, the Commission will settle the dispute. If Commission intervention is required, a mediated resolution will be pursued.</del></p> <p>11/23/04 BAI #2</p>	<p>Clarification and correction.</p>	<p>&gt; CLECs DISAGREE.                      1. Elimination of "payment due" did not require clarification. The PSC Order reflected that the claim should be submitted 60 days after the payment due date.                      2. Addition of language "of the performance measurement report for which the obligation arose" basically reduces the time allotted to CLECs for amassing the level of details to substantiate their claims.                      3. BellSouth provides no substantiation for deletion of the remaining language. Deletion of this language limits CLEC escalation options.</p>	<p>&gt; Staff agrees with BellSouth's position with modified language provided in BellSouth's 11/23/04 action item 2.                      &gt; Staff recommends that Section 4.4 Enforcement Mechanisms Payment of Tier -1 and Tier-2 Amounts, item 4.4.4 should state:</p> <p>If a CLEC disputes the amount paid for Tier-1 Enforcement Mechanisms, the CLEC shall submit a written claim to BellSouth within sixty (60) days after the payment date. BellSouth shall investigate all claims and provide the CLEC written findings within thirty (30) days after receipt of the claim. If BellSouth determines the CLEC is owed additional amounts, BellSouth shall pay the CLEC such additional amounts within thirty (30) days after its finding along with 6% simple interest annum.</p>
21	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts                      4.4.5 <del>At the end of each calendar year, an independent accounting</del></p>	<p>The deleted portion is covered to the extent necessary by revised audit provisions. The Audit Policy is provided herein as section 4.8.</p>	<p>&gt; CLECs DISAGREE.                      1. First, the CLECs do not agree with the proposed audit policy. Second, the Audit Policy, as described in section 4.8, makes</p>	<p>&gt; Staff agrees with BellSouth's position with modified language provided in BellSouth's 11/23/04 action item 2.                      &gt; Staff recommends that Section 4.4</p>

	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
	<p><del>firm, mutually agreeable to the Florida Public Service Commission and BellSouth, shall certify that all penalties under that the results of all Enforcement Mechanisms were paid and accounted for in accordance with Generally Accepted Account Principles (GAAP). These annual audits shall be performed based upon audited data of BellSouth's performance measurements.</del></p> <p><u>For Tier-2 Enforcement Mechanisms, if the Commission requests clarification of an amount paid, a written claim shall be submitted to BellSouth within sixty (60) days after the date of the performance measurement report for which the obligation arose. BellSouth shall investigate all claims and provide the Commission written findings within thirty (30) days after receipt of the claim. If BellSouth determines the Commission is owed additional amounts, BellSouth shall pay such additional amounts within thirty (30) days after its findings along with 6% simple interest per annum.</u></p> <p>11/23/04 BAI #2</p>	<p>Correct oversight by adding procedure to address clarification requests for Tier 2 by the Commission, which already exists for Tier 1 for CLECs.</p>	<p>no mention of the Audit Policy including tasks represented in the language marked for deletion.</p> <p>CLECS AGREE in Part and Disagree in Part. CLECs agree that Tier II claims should be included. However, CLECs object to the specific language—See Item 2 in Row 28 above..</p>	<p>Enforcement Mechanisms Payment of Tier -1 and Tier-2 Amounts, item 4.4.5 should state:</p> <p>For Tier-2 Enforcement Mechanisms, if the Commission requests clarification of an amount paid, a written claim shall be submitted to BellSouth within sixty (60) days after the payment date. BellSouth shall investigate all claims and provide the Commission written findings within thirty (30) days after receipt of the claim. If BellSouth determines the Commission is owed additional amounts, BellSouth shall pay such additional amounts within thirty (30) days after its findings along with 6% simple interest per annum.</p>
30	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts 4.4.6: <u>BellSouth may set off any SEEM payments to a CLEC against undisputed amounts owed by a CLEC to BellSouth pursuant to the</u></p>	<p>Prevent unreasonable situation where BellSouth is paying SEEM to a CLEC who is not paying an undisputed bill.</p>	<p>• CLECs DISAGREE.</p> <p>This is similar to what is proposed in Section 4.2.2, in that BellSouth is attempting to collapse all SEEM payments into offsets against its other</p>	<p>• Staff agrees with CLECs position.                  • Staff recommends that Section 4.4 Enforcement Mechanisms Payment of Tier -1 and Tier-2 Amounts, item 4.4.6 should be deleted.</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
	<p><u>Interconnection Agreement between the parties which have not been paid to BellSouth within ninety (90) days past the Bill Due Date as set forth in the Billing Attachment of the Interconnection Agreement.</u></p>		<p>obligations and liabilities. This must be rejected.. Here, it is BellSouth's discretion as to whether the amount is "undisputed" and has "not been paid" and there is no opportunity for CLEC input. BellSouth alone is the arbiter of whether the set off is appropriate, a situation ripe for the abuse of anti-competitive activity. Thus, the concept is inappropriate (SEEM payments are penalties which cannot be treated as a civil damage set off) and its proposed implementation is dangerous (BellSouth alone as the decision maker promotes anti-competitive behavior BellSouth alone is the arbiter of whether the set off is appropriate, a situation ripe for the abuse of anti-competitive activity. Thus, the concept is inappropriate (SEEM payments are penalties which cannot be treated as a civil damage set off) and its proposed implementation is dangerous (BellSouth alone as the decision maker promotes anti-competitive behavior) Also see response to Row 20.</p>	
21	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts  <u>4.4.7 Any adjustments for underpayment or overpayment of calculated Tier 1 and Tier 2 remedies will be made consistent with the terms of BellSouth's Policy On Reposting Of Performance Data and Recalculation of SEEM Payments, as set forth in Appendix G of this document.</u></p> <p>3/8/05 BAI #2</p> <p>Any adjustments of underpayment of calculated Tier 1 and Tier 2</p>	<p>This provision is provided to formalize the incorporation of the Reposting Policy.</p>	<p>➤ CLECs DISAGREE.                      There are circumstances, other than those triggered by the Reposting Policy that could necessitate the issuance of an adjustment. Adjustments, unrelated to the Reposting Policy, should not be prohibited due to this proposed language. Additionally, the Reposting Policy is already formalized by being an existing section of the SEEM plan.</p>	<p>➤ Staff agrees with BellSouth's position with modified language provided in BellSouth's 3/8/05 action item 2.                      ➤ Staff recommends that Section 4.4 Enforcement Mechanisms Payment of Tier -1 and Tier-2 Amounts, item 4.4.7 should state:</p> <p>Any adjustments of underpayment of calculated Tier 1 and Tier 2 remedies will be made consistent with the terms of BellSouth's Policy on Reposting of Performance Data and Recalculation of SEEM Payments, as set forth in Appendix G of this document . If any circumstance necessitating remedy adjustments should</p>

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	<p>remedies will be made consistent with the terms of BellSouth's Policy on Reposting of Performance Data and Recalculation of SEEM Payments, as set forth in Appendix G of this document. <u>If any circumstance necessitating remedy adjustments should occur that is not specifically addressed in the Reposting Policy, such adjustments will be made consistent with the terms defined in Paragraph 6 of the Reposting Policy ("SEEM payments will be subject to recalculation for a maximum of three months in arrears. . .") unless the Florida Commission orders otherwise.</u></p>			<p>occur that is not specifically addressed in the Reposting Policy, such adjustments will be made consistent with the terms defined in Paragraph 6 of the Reposting Policy ("SEEM payments will be subject to recalculation for a maximum of three months in arrears. . .") unless the Florida Commission orders otherwise.</p>
	<p>Enforcement Mechanisms Payment of Tier-1 and Tier-2 Amounts  <u>4.4.8 Any adjustments for underpayments will be made in the next month's payment cycle after the recalculation is made. The final current month PARIS reports will reflect the final paid dollars, including adjustments for prior months where applicable. Questions regarding the adjustments should be made in accordance with the normal process used to address CLEC questions related to SEEM payments.</u></p>	<p>Clarify by stating current practice used to make adjustments and address CLEC questions.</p>	<p>➤ CLECs AGREE, WITH CAVEAT. CLECs agree that adjustments should be included in the plan. However, the current and proposed process for handling adjustment questions is currently ineffective. CLECs have consistently not been able to acquire the level of detail to understand or gain knowledge of the source of adjustments by using the "normal process used to address CLEC questions related to SEEM payments." Also see CLEC Coalition Filings of August 18, 2004 and October 11, 2004 on this issue.</p>	<p>➤ Parties agree; however, staff further agrees with CLEC caveat that not enough information has been provided to staff or the CLECS to acquire the level of detail to understand the source of adjustments                  ➤ Staff accepts BellSouth's redline and recommends that Section 4.4 Enforcement Mechanisms Payment of Tier -1 and Tier-2 Amounts, item 4.4.8 should be revised to state:</p> <p>Any adjustments for underpayments will be made in the next month's payment cycle after the recalculation is made. The final current month PARIS reports will reflect the final paid dollars, including adjustments for prior months where applicable. Questions regarding the adjustments should be made in accordance with the normal process used to address CLEC questions related to SEEM</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
			<p>payments.</p> <p>➤ Staff recommends that an additional provision be added to Section 4.4 Enforcement Mechanisms Payment of Tier -1 and Tier-2 Amounts that details:</p> <p>The procedures for disclosing source of adjustments and cites the requirements as to what information should be disclosed and how.</p>
<p>Enforcement Mechanisms Limitations of Liability 4.5.1 <del>BellSouth's total liability for the payment of Tier-1 and Tier-2 Enforcement Mechanisms shall be collectively and absolutely capped at 39% of net revenues in Florida, based upon the most recently reported ARMIS data.</del></p>	<p>Addressed in new Section 4.7 entitled "Enforcement Mechanism Cap."</p>	<p>➤ CLECs DISAGREE. BellSouth has provided no substantiation for reducing the "Enforcement Mechanism Cap." BellSouth has provided no rationale that would cause a different determination than the 39% ordered by this Commission and consistent with the FCC's guidance on effective enforcement mechanisms in its first Communications Act Section 271 approval for Verizon (then Bell Atlantic's) in-region long distance entry.</p>	<p>➤ Staff agrees with BST's position ➤ Staff recommends that Section 4.5 Enforcement Mechanisms Limitations of Liability, item 4.5.1 should be deleted from this section and moved to section 4.7 (see number 40 below).</p>
<p>Enforcement Mechanisms Limitation of Liability 4.5.2: BellSouth will not be <u>obligated to pay Tier-1 or Tier-2 ... if such noncompliance results from ... failure to follow established and documented procedures.</u></p> <p>11/23/04 BAI #5</p> <p>"... BellSouth shall provide <u>each CLEC and the Commission</u> with reasonable notice of, <u>and supporting documentation for</u>, such acts or omissions, <del>the ALEC</del> with any such supporting</p>	<p>Clarifies current provisions by stating additional specific instances where BellSouth should not be obligated to pay SEEM.</p>	<p>➤ CLECs DISAGREE. The language, "failure to follow established and documented procedures", is very broad. Therefore, the rationale provided by BellSouth does not address the proposed change.</p>	<p>➤ Staff agrees with BellSouth's with modifications per the CLEC comments, additional language provided in BellSouth's 11/23/04 action item 5, and additional language provided in CLECs 3/8/05 action item 1. ➤ Staff recommends that Section 4.5 Enforcement Mechanisms Limitations of Liability, item 4.5.2 should be 4.5.1 and be revised to state:</p> <p>BellSouth will not be obligated to pay Tier 1 or Tier 2 Enforcement Mechanisms for non-compliance with a performance measure if such non-compliance results from a CLECs acts or omissions that cause</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
<p><u>documentation.” Each CLEC shall have 14 days from the filing of such Notice to challenge, through the dispute resolution provisions of this plan, the claims made be BellSouth. BellSouth shall not be obligated to pay any amounts subject to such disputes until the dispute is resolved.</u></p> <p>3/8/05 CAI #1</p> <p>... BellSouth shall provide each CLEC and the Commission with reasonable notice of, and supporting documentation for, such acts or omissions. Each CLEC shall have 14 days from the filing of such Notice <u>to advise BellSouth and the Commission in writing of its intent</u> to challenge, through the dispute resolution provisions of this plan, the claims made be BellSouth. BellSouth shall not be obligated to pay any amounts subject to such disputes until the dispute is resolved.</p>			<p><del>or contribute towards</del> failed or missed performance measures. These acts or omissions include but are not limited to, accumulation and submission of orders at unreasonable quantities or times, failure to follow <b>publicly available</b> procedures, or failure to submit accurate orders or inquiries. BellSouth shall provide each CLEC and the Commission with reasonable notice of, and supporting documentation for, such acts or omissions. Each CLEC shall have <u>10 business days</u> from the filing of such Notice to <u>advise BellSouth and the Commission in writing of its intent</u> to challenge, through the dispute resolution provisions of this plan, the claims made by BellSouth. BellSouth shall not be obligated to pay any amounts subject to such disputes until the dispute is resolved.</p>
<p>Enforcement Mechanisms Limitations of Liability 4.5.3 <del>BellSouth shall not be obligated for Tier 1 or Tier-2 Enforcement Mechanisms for noncompliance with a performance measure if such non-compliance was the result of an act or omission by a ALEC that was in bad faith.</del></p>	<p>Covered in revised Section 4.5.2.</p>	<p>➤ CLECs AGREE.</p>	<p>➤ Parties Agree ➤ Staff accepts BellSouth's redline and recommends that Section 4.5 Enforcement Mechanisms Limitations of Liability item 4.5.3 should be deleted</p>
<p>Limitations of Liability 4.5.4: ...a Force Majeure event (as</p>	<p>source of the definition of a Force Majeure event</p>	<p>This should be defined in the Plan, not in an external document created by</p>	<p>➤ Staff agrees with BST's position with modifications provided in BellSouth 11/23/04 Action Item #7. BellSouth</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
	<p><u>defined in the most recent version of BellSouth's standard Interconnection Agreement)</u></p> <p>11/23/04 BAI #7</p> <p>In the event that performance under this SQM/SEEM Plan, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts unavailability of equipment from vendor, changes requested by a CLEC, or any other circumstances beyond the reasonable control and without the fault or negligence of BellSouth. BellSouth, upon giving prompt notice to the Commission and CLECs, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference <u>(and the affected CLECs shall likewise be excused from performance of obligations arising under the SQM/SEEM Plan on a day-to-day basis until the delay, restriction or interference has ceased)</u>; provided, however, that BellSouth shall use diligent efforts to avoid or remove such causes or non-performance <u>and all affected</u></p>	<p>The SEEM Force Majeure language tracks the Force Majeure language contained in BellSouth's latest version of its standard interconnection agreement. For SEEM purposes, the underlined languages does not appear to be applicable or necessary. As such, BellSouth recommends deleting such language from the SEEM Force Majeure clause.</p>	<p>BellSouth. CLECs oppose tying the definition of Force Majeure to an unarbitrated agreement. The definition should be included in the SEEM and agreed on by CLECs and the Commission for clarity to all parties.</p>	<p>3/8/05 Action Item #4, and staff's proposed changes.</p> <p>➤ Staff recommends Section 4.5 Enforcement Mechanisms Limitations of Liability item 4.5.4 should be 4.5.2 and revised to state:</p> <p>BellSouth shall not be obligated to pay Tier-1 or Tier-2 Enforcement Mechanisms for non-compliance with a performance measurement if such non-compliance was the result of any event that performance under this SQM/SEEM Plan is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts <del>unavailability of equipment from vendor, changes requested by a CLEC, or any other</del> circumstances beyond the reasonable control and without the fault or negligence of BellSouth. BellSouth, upon giving prompt notice to the Commission and CLECs, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference; provided, however, that BellSouth shall use diligent efforts to avoid or remove such causes of non-performance.</p> <p>➤ Staff recommends that BellSouth add new item 4.5.2.1 to Section 4.5 Enforcement Mechanisms Limitations of Liability. Item 4.5.2.1 should state:</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
<p>parties shall proceed whenever such causes are removed or cease.</p> <p>3/8/05 BAI #4.</p> <p>4.5.2.1 <u>To invoke the application of Section 4.5.2 (Force Majeure Event), BellSouth will provide written notice to the Commission and CLECs wherein BellSouth will identify the Force Majeure Event, the affected measures, and the impacted areas including affected NPAs and NXXs.</u></p> <p>4.5.2.2 <u>No later than ten (10) business days after BellSouth provides written notice in accordance with Section 4.5.2.1 affected parties must file written comments with the Commission to the extent they have objections or concerns regarding the application of Section 4.5.2.</u></p> <p>4.5.2.3 <u>BellSouth's written notice of the applicability of Section 4.5.2 would be presumptively valid and deemed approved by the Commission effective thirty (30) calendar days after BellSouth provides notice in accordance with Section 4.5.2.1.</u></p> <p>4.5.2.4 <u>During the pendency of a Force Majeure Event, BellSouth shall provide the Commission with periodic updates of its restoration/recovery progress and efforts as agreed upon between the</u></p>			<p>To invoke the application of Section 4.5.2 (Force Majeure Event), BellSouth will provide written notice to the Commission and CLECs wherein BellSouth will identify the Force Majeure Event, the affected measures, and the impacted areas including affected NPAs and NXXs.</p> <hr/> <p>&gt; Staff recommends that BellSouth add new item 4.5.2.2 to Section 4.5 Enforcement Mechanisms Limitations of Liability. Item 4.5.2.2 should state:</p> <p>No later than ten (10) business days after BellSouth provides written notice in accordance with Section 4.5.2.1 affected parties must file written comments with the Commission to the extent they have objections or concerns regarding the application of Section 4.5.2.</p> <hr/> <p>&gt; Staff recommends that BellSouth add new item 4.5.2.3 with staff's proposed modifications to Section 4.5 Enforcement Mechanisms Limitations of Liability. Item 4.5.2.3 should state:</p> <p>BellSouth's written notice of the applicability of Section 4.5.2 would be presumptively valid and deemed approved by the Commission effective thirty (30) calendar days after BellSouth provides notice in accordance with Section 4.5.2.1. <u>The Commission may require BellSouth to provide a true-up of SEEM fees to effected carriers if a Force Majeure declaration is found to be invalid by the Commission after it has taken effect.</u></p> <hr/> <p>&gt; Staff recommends that BellSouth add</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
	<u>Commission Staff and BellSouth.</u>			<p>new item 4.5.2.4 to Section 4.5 Enforcement Mechanisms Limitations of Liability. Item 4.5.2.4 should state:</p> <p>During the pendency of a Force Majeure Event, BellSouth shall provide the Commission with periodic updates of its restoration/recovery progress and efforts as agreed upon between the Commission Staff and BellSouth.</p>
17	Enforcement Mechanisms Affiliate Reporting <del>4.6 Affiliate Reporting</del> Change of Law	This is a new section that uses the section number previously designated for Affiliate Reporting.	<p>➤ CLECs DISAGREE.</p> <p>This change is unnecessary, as set forth in the comments in the next Response.</p>	<p>➤ Staff accepts BellSouth's redline and recommends that Section 4.6 should be added with modifications discussed in item 4.6.1 below.</p>
18	<p>Enforcement Mechanisms <del>Affiliate Reporting</del> Change of Law 4.6.1</p> <p><u>Upon a particular Commission's issuance of an Order pertaining to Performance Measurements or Remedy Plans in a proceeding expressly applicable to all CLECs, BellSouth shall implement such performance measures and remedy plans covering its performance for the CLECs, as well as any changes to those plans ordered by the Commission, on the date specified by the Commission. If a change of law relieves BellSouth of the obligation to provide any UNE or UNE combination pursuant to Section 251 of the Act, then upon providing the Commission with 30 days written notice, BellSouth will cease reporting data or paying remedies in accordance with the change of law. Performance Measurements and remedy plans</u></p>	<p>The Affiliate Reporting section is eliminated because it is irrelevant for SEEM. That is, this provision is unnecessary to determine whether BellSouth provides nondiscriminatory access. The standards for nondiscriminatory access are defined for each metric in the SQM.</p> <p>Adds specific provision to address how changes of law will be handled in SEEM. This provision represents a reasonable balance between providing adequate notice that payments will cease with prompt relief for BellSouth to discontinue payments that should no longer be required.</p>	<p>➤ CLECs DISAGREE.</p> <p>This change is unnecessary and should be rejected. First, it apparently would an Order from another state commission to be implemented in Florida. Second, it would allow BellSouth to unilaterally cease reporting data or paying remedies, which is inappropriate and would promote anti-competitive activity. Third, it misconstrues the law. Separate from its obligations under Section 251, BellSouth continues to be obligated to provide non-discriminatory access to certain elements and services under Section 271 of the Telecommunications Act of 1996 and Florida statutes. To ensure BellSouth's compliance with these requirements of non-discriminatory access, performance measures such as those implemented by this Commission are crucial. Further, excusing BellSouth from providing non-discriminatory access to these wholesale elements and services is against the public interest and the purpose of service quality measurements.</p>	<p>➤ Staff agrees with BST's position with modified language as suggested by staff.</p> <p>➤ Staff recommends that Section 24.6 Change of Law item 4.6 should be revised to state:</p> <p><u>Upon a particular Commission's issuance of an Order pertaining to Performance Measurements or Remedy Plans in a proceeding expressly applicable to all CLECs, BellSouth shall implement such performance measures and remedy plans covering its performance for the CLECs, as well as any changes to those plans ordered by the Commission, on the date specified by the Commission. If a change of law occurs which may relieve BellSouth's provisioning of a UNE or UNE combination, BellSouth shall Petition the Commission within 30 days if it seeks to cease reporting data or paying remedies in accordance with the change of law.</u> Performance Measurements and remedy plans that have been ordered by the Commission can currently be accessed via</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
<p><u>that have been ordered by the Commission can currently be accessed via the Internet at <a href="http://pmap.bellsouth.com">http://pmap.bellsouth.com</a>. Should there be any difference between the performance measure and remedy plans on BellSouth's website and the plans the Commission has approved as filed in compliance with its orders, the Commission-approved compliance plan will supersede as of its effective date.</u></p> <p>4/8/05 BAI #5                      4.6.1 Upon a particular Commission's issuance of an Order pertaining to Performance Measurements or Remedy Plans in a proceeding expressly applicable to all CLECs, BellSouth shall implement such performance measures and remedy plans covering its performance for the CLECs, as well as any changes to those plans ordered by the Commission, on the date specified by the Commission. If a change of law relieves BellSouth of the obligation to provide any UNE or UNE combination pursuant to Section 251 of the Act, then upon providing the Commission with 30 days written notice, Bellsouth will cease reporting <u>both SOM and SEEM</u> data or paying remedies in accordance with the change of law. Performance Measurements and remedy plans that have been ordered by the Commission can currently be accessed via the</p>		<p>Also see CLEC Coalition's Issues List and Comments filed on September 13, 2004.</p> <p>&gt; Further, the Commission may deem certain wholesale services to be critical to CLECs that are not designated as UNEs as it has with special access and may chose to impose remedies. Although Florida has not applied remedies to special access measures, it is not barred from doing so at the 8<sup>th</sup> Circuit Court of Appeals has determined that the Minnesota PUC's inclusion of a special access performance enforcement plan is not preempted by the FCC even though services may be classified as interstate.</p>	<p>the Internet at <a href="http://pmap.bellsouth.com">http://pmap.bellsouth.com</a>. Should there be any difference between the performance measure and remedy plans on BellSouth's website and the plans the Commission has approved as filed in compliance with its orders, the Commission-approved compliance plan will supersede as of its effective date.</p> <p>&gt; Staff recommends that Section 4.6 Change of Law item 4.6.1.1 be deleted.</p> <p>-----</p> <p>&gt; Staff recommends that Section 4.6 Change of Law item 4.6.1.2 be deleted.</p> <p>-----</p> <p>&gt; Staff recommends that Section 4.6 Change of Law item 4.6.1.3 be deleted</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
	<p>Internet at <a href="http://pmap.bellsouth.com">http://pmap.bellsouth.com</a>. Should there be any difference between the performance measure and remedy plans on BellSouth's website and the plans the Commission has approved as filed in compliance with its orders, the Commission-approved compliance plan will supersede as of its effective date.</p> <p><u>4.6.1.1 To revise the SOM and/or SEEM plans in accordance with Section 4.6.1 BellSouth will provide the Commission and CLECs with written notice identifying the change of law and the impacted measures.</u></p> <p><u>4.6.1.2 No later than ten (10) business days after such written notice has been provided, affected parties must file written comments with the Commission to the extent they have objections or concerns regarding the application of Section 4.6.1.</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>			
	<p><del>BellSouth shall provide monthly</del></p>	<p>section. Formerly, this information was reflected in section 4.5.1.</p>	<p>BellSouth's reasoning does not address</p>	<p>➤ Staff recommends that Section 4.6</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
<p>results for each metric for each BellSouth ALEC affiliate; however, only the Florida Public Service Commission shall be provided the number of transactions or observations for BellSouth ALEC affiliates. Further, BellSouth shall inform the Commission of any changes regarding non-ALEC affiliates' use of its OSS databases, systems, and interfaces.</p> <p>4.7 Add Section: <u>Enforcement Mechanism Cap</u></p>		<p>the deletion of the Affiliate Reporting section. Therefore, no rationale has been stated to revisit the Commission's decision on Affiliate Reporting. Further, Sec. 251 (c) (2) (C) says incumbents have the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—"that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."</p> <p>Also see response to Row 33 above regarding enforcement cap.</p>	<p>Enforcement Mechanisms Affiliate Reporting, item 4.6.1 language should be retained with modifications.</p> <p>BellSouth shall provide monthly results for each metric for each BellSouth ALEC affiliate. <b>Upon request</b>, the Florida Public Service Commission shall be provided the number of transactions or observations for BellSouth ALEC affiliates. Further, BellSouth shall inform the Commission of any changes regarding non-ALEC affiliates' use of its OSS databases, systems, and interfaces.</p> <hr/> <ul style="list-style-type: none"> <li>➤ Staff agrees with BellSouth's position to add new section Enforcement Mechanism Cap</li> <li>➤ Staff recommends that new section 4.7 Enforcement Mechanism Cap, item 4.7.1 should state:</li> </ul> <p>BellSouth's total liability for the payment of Tier-1 and Tier-2 Enforcement Mechanisms shall be collectively and absolutely capped at 36 % of net revenues in Florida, based upon the most recently reported ARMIS data.</p> <ul style="list-style-type: none"> <li>➤ Staff accepts BellSouth's redline and recommends that new section 4.7 Enforcement Mechanism Cap, item 4.7.2 should state:</li> </ul> <p>If projected payments exceed the state cap, a proportional payment will be made to the respective parties.</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
				<p>➤ Staff accepts BellSouth's redline and recommends that new section 4.7 Enforcement Mechanism Cap, item 4.7.3 should state:</p> <p>If BellSouth's payment of Tier-1 and Tier-2 Enforcement Mechanisms would have exceeded the cap referenced in this plan, a CLEC may commence a proceeding with the Commission to demonstrate why BellSouth should pay any amount in excess of the cap. The CLEC shall have the burden of proof to demonstrate why, under the circumstances, BellSouth should have additional liability.</p>
11	<p><u>Audits</u> 4.8 – 4.8.1: Add new section: <u>Audits</u></p>	<p>Incorporates a more thorough audit plan into SEEM. Having all parties share in the cost provides equal incentive to limit the scope of the audit to meaningful activities.</p>	<p>➤ CLECs DISAGREE. BellSouth has not provided any rationale to justify changing auditing provisions ordered by this Commission. BellSouth should continue to audit its PMQAP and the performance data.</p> <p>Additionally, BellSouth is obligated to provide compliant performance and uses its performance reporting as evidence of that compliant performance. Therefore, BellSouth should continue to incur the cost of the audit since it's required for BellSouth's purposes.</p>	<p>➤ Staff recommends for BellSouth to revise and incorporate audit policy as discussed and agreed upon in SQM section of six-month review. BellSouth should further incorporate appropriate changes to the audit policy where SEEM should be referenced.</p>
12	<p>Dispute Resolution 4.74.9 Notwithstanding any other provision of the Interconnection Agreement between BellSouth and each CLECALEC, any dispute regarding BellSouth's performance or obligations pursuant this Plan shall be resolved by the Commission.</p>	<p>Correction.</p>	<p>➤ CLECs AGREE.</p>	<p>➤ Parties Agree; however, staff proposes further modifications. ➤ Staff recommends that Section 4.9 Enforcement Mechanisms Dispute Resolution item 4.9.1 should be revised to state:</p> <p>Notwithstanding any other provision of the Interconnection Agreement between BellSouth and each CLEC, if a dispute</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
			<p>arises regarding BellSouth's performance or obligations pursuant to this Plan, BellSouth and the CLEC shall negotiate in good faith for a period of thirty (30) days to resolve the dispute. If at the conclusion of the 30 day period, BellSouth and the CLEC are unable to reach a resolution, then the dispute shall be resolved by the Commission.</p>
<p><u>Regional and State Coefficients Section 4.10</u></p> <p>11/23/04 BAI #6</p>	<p>Provided for completeness of documentation. Describes method currently used to apportion penalties calculated for regional measures and modified based on the proposed change from a measurement-based plan to a transaction-based plan.</p>	<p>&gt; CLECs AGREE IN PART AND DISAGREE IN PART. The CLECs agree to the inclusion of an explanation for Regional &amp; State Coefficients.</p> <p>However, the description is incomplete and, perhaps, contradictory. Although there are specific definitions for the "regional" and "state" coefficients for Tiers I and II, respectively, there did not appear to be a statement of how the coefficients are to be used in the remedy calculations, nor any examples.</p> <p>Also, Section 4.10 states that "[a] regional coefficient is calculated to split Tier I payments ... among CLECs" but the coefficients in App. E seem designed to split payments among states, for a specific CLEC.</p> <p>Thus, CLECs cannot agree at this time because the discussion of these coefficients is incomplete and seemingly contradictory, and therefore CLECs require clarification before providing a final response.</p>	<p>&gt; Upon further discussion, parties agree to the following modifications to Section 4.10 Regional and State Coefficients as provided in BellSouth 11/23/04 Action Item #6:</p> <p>Some metrics are calculated for the entire BellSouth region, rather than by state.</p> <p>Where these metrics are a Tier 1 SEEM submetric, a regional coefficient is calculated to determine the amount of the penalty for the CLEC in each state. For example, the Acknowledgement Completeness Measurement can be measured for an individual CLEC, but only at the regional level. In several states it is also a Tier 1 SEEM submetric. Thus, if there is a failure in this measurement for a CLEC, it is necessary to determine the amount of penalty for the CLEC in each state. A Regional Coefficient is used to do this. (Appendix E, Section E.6 describes the method of calculating the Regional Coefficients.) The amount of Tier 1 penalty for the CLEC in a state is determined by multiplying the calculated penalty for the measurement in the state by the Coefficient for the state.</p> <p>A state coefficient is calculated to split</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
<p>Fee Schedule Liquidated Damages for Tier-2 Measures Table 2 Appendix A, Table A.2, reflects the current and proposed changes to the Fee Schedule. See Redlined SEEM plan, Exhibit B, for proposed changes.</p>	<p>Same rationale as for Table 1 above. See Attachment 1 to this exhibit for the rationale for changes in specific fees.</p>	<ol style="list-style-type: none"> <li>1. CLECs DISAGREE. (Comments apply to fees for Tier 1 and Tier 2 measures) It is inappropriate to refer to these payments as “liquidated damages”, a legal term of art referring to the amount parties to a contract negotiate in advance as the agreed upon damages in the event of a breach. Liquidated damages offer certainty because the parties know in advance that they have agreed upon a certain amount which will be paid, even if the actual damages later prove to be different. These payments have none of the elements of liquidated damages. Accordingly, it is inaccurate to use that term in describing these payments. In addition, it is of concern that BellSouth would attempt to insert that language in the document when it so obviously should not be included. That it now appears indicates that BellSouth wants it included in order to make the argument, no matter that it is specious, in other legal proceedings that penalty payments under this plan should operate as the only remedy available for damages CLECs have suffered.</li> <li>2. The purpose of the remedy plan is to deter poor performance, not make providing poor performance an ILEC cost of doing business.</li> <li>3. BellSouth’s statement that the proposed fee schedule is designed to mirror the relationship typically found in commercial transactions bears no direct relationship to the SEEM plan as</li> </ol>	<p>Tier 2 payments for regional metrics among states by submetric.</p> <p>&gt; See Fee Schedules proposed in staff’s strawman.</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
			<p>this is not a commercial transaction where both parties are negotiating on an equal footing. In fact, CLECs are disadvantaged from the outset, as BellSouth is in complete control of the facilities necessary to CLEC survival in the telecommunications arena. As a result, BellSouth's attempts to reduce their obligations to those present in a commercial transaction are meaningless and confusing.</p> <p>Furthermore, BellSouth's rationale for relating the proposed fee schedule to the charges CLECs actually incur by domain is flawed and incomplete. The intent of the penalty payments is to provide an incentive against BellSouth backsliding in their performance to CLECs. BellSouth's proposal only considers some of the tangible costs to the CLEC. For example, if BellSouth's actions during the Ordering phase were to result in the loss of a CLEC customer, the costs to the CLEC would be more than just the service order charge. In addition to the service order charge from BellSouth, the CLEC will also incur either a manual or electronic loop make-up charge, not to mention the time and expense incurred by CLEC resources in dealing with that customer and their order. On top of that, BellSouth's proposal does not consider the CLEC's foregone revenue from that customer. And for the Collocation domain, BellSouth states that they used only the application fee to derive the penalty amount for missed collocation transactions. There are several other non-recurring charges that are billed to CLECs than just the application fee. Why</p>	

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
		weren't these included along with the application fee in determining the penalty amounts?	
<p>15 SEEM Sub-metrics Applicable to all SEEM sub-metrics Tables B-1 and B-2. General approach taken to set of measures included in plan.</p>	<p>Generally, one measure of timeliness and one measure of accuracy should apply to each major domain; e.g., Ordering, Provisioning, Maintenance &amp; Repair, etc. In addition to the specific reasons given below, BellSouth is proposing to move closer to this general concept with the following changes. Also, measures of some intermediate processes were removed because such process may have little if any customer effect and any significant customer effect would likely be reflected in other measures.</p>	<p>&gt; CLECs DISAGREE. CLECs need clarification of the specific rationale associated with the deletion of each individual metric since the BellSouth reasoning is not applicable to each deleted metric.</p> <p>CLECs do not agree to deleting metrics that BellSouth is failing or that have not been implemented as ordered.</p>	<p>&gt; Appendix B should be retained showing applicable Tier 1 SEEM sub-metrics (Table B-1) and Tier 2 SEEM sub-metrics (Table B-2) in accordance with the SQM disaggregation as agreed upon by the parties in the six-month review.</p>
<p>16 SEEM Sub-metrics Measure OSS-1 Table B-2: Tier 2 Sub-metrics Remove measure OSS-1, Average Response Interval and Percent within Interval (Pre-Ordering/Ordering), from Tier 2 of the SEEM plan.</p>	<p>BellSouth proposed removal of this measure from the SQM. See SQM matrix filed on July 28, 2004 for the rationale.</p>	<p>&gt; CLECs DISAGREE. See CLEC SQM matrix filed on August 27, 2004 for rationale.</p>	<p>&gt; See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.</p>
<p>17 SEEM Sub-metrics Measure OSS-4 Table B-2: Tier 2 Sub-metrics Remove measure OSS-4, Response Interval (Maintenance &amp; Repair), from Tier 2 of the SEEM plan.</p>	<p>BellSouth proposed removal of this measure from the SQM. See SQM matrix filed on July 28, 2004 for the rationale.</p>	<p>&gt; CLECs DISAGREE. &gt; See CLEC SQM matrix filed on August 27, 2004 for rationale</p>	<p>&gt; See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.</p>
<p>18 SEEM Sub-metrics Measure PO-1 Table B-1: Tier 1 Sub-metrics &amp; Table B-2: Tier 2 Sub-metrics Remove measure PO-1, Loop Makeup -Response Time-Manual, from Tier 1 and Tier 2 of the SEEM plan.</p>	<p>BellSouth proposed removal of this measure from the SQM. See SQM matrix filed on July 28, 2004 for the rationale.</p>	<p>&gt; CLECs DISAGREE. &gt; See CLEC SQM matrix filed on August 27, 2004 for rationale</p>	<p>• See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.</p>
<p>19 SEEM Sub-metrics</p>	<p>BellSouth proposed removal of this</p>	<p>&gt; CLECs DISAGREE.</p>	<p>&gt; See staff's position on SQM</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
	Measure O-1 Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics Remove measure O-1, Acknowledgement Message Timeliness from Tier 1 and Tier 2 of the SEEM plan.	measure from the SQM. See SQM matrix filed on July 28, 2004 for the rationale.	See CLEC SQM matrix filed on August 27, 2004 for rationale.	disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
50	SEEM Sub-metrics Measure O-2 (AKC) Table B-1: Tier 1 Sub-metrics Remove measure O-2, Acknowledgement Message Completeness, from Tier 1 of the SEEM plan. This measure would apply to Tier 2 only.	Measure O-2 tracks whether an acknowledgement is returned to the CLECs after an LSR or transmission is electronically submitted. If acknowledgments are not being sent, it does not directly affect the CLECs ability to provide service to its customer but is a secondary measure of an intermediate process. As such, intermittent deficiencies, particularly with the high benchmark do not indicate a significant problem. Consequently, penalties should only apply if there are persistent problems in this area, which is the situation that Tier 2 was designed to address. Also, this measure captures performance related to an electronic process that uses regional systems, problems that occur Are not limited to individual CLECs, as intended when Tier 1 penalties apply. Further the nature of electronic systems usually makes this problem largely self- correcting and any harm that occurs affects the industry as a whole not an individual CLEC. Therefore, this measure should be included in Tier 2 only. If BellSouth's performance for a given month triggers the Low Performance Fee Schedule, BellSouth will pay Tier 1 penalties in addition to Tier 2 penalty for the month involved.	> CLECs DISAGREE. CLECs oppose the elimination of Tier 1 remedies as the loss of orders at this initial state creates burdens for CLECs and potential problems meeting customer requirements for service delivery. Therefore, an aggregate-only view will conceal a CLEC-specific problem.  The fact that BellSouth's OSS are regional does nothing to mitigate the poor service that can be received by individual CLECs. For example MCI has experienced a bad month after a system software change and the problem was fixed quickly, not doubt due to the Tier 1 remedies paid for dropping thousands of orders in multiple states. If this problem has been masked by all the other CLEC orders being processed, BellSouth might not have fixed the problem so quickly and continued to discriminate against MCI I other CLECs, which also is a violation of the Communications Act.	> See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
51	<p>SEEM Sub-metrics Measures O-3 &amp; O-4; (PFT) Table B-1: Tier 1 Sub-metrics BellSouth recommended combining measure O-4, Flow-Through Service Requests (Detail), with measure O-3, Flow-Through Service Request (Summary). Thus, measure O-4 would no longer exist as a separate measure and measure O-3, as modified, would only apply to Tier 2; Tier 1 would <u>not</u> apply. Also change disaggregation for this measure as follows:</p> <ol style="list-style-type: none"> <li>1. Combine Residence and Business into Resale.</li> <li>2. Combine UNE Loop &amp; Port Combo and UNE Other into UNE.</li> </ol> <p>The resulting disaggregation would be: Resale, UNE and LNP.</p>	<p>BellSouth, in its current proposal, recommends that measures O-3, <i>Percent Flow-Through Service Requests (Summary)</i>, and O-4, <i>Percent Flow-Through Service Requests (Detail)</i> be combined into a single SQM that shows both the Aggregate CLEC data (Summary) and CLEC Specific data (Detail). The SEEM penalty, in BellSouth's proposal, would apply to the Aggregate CLEC data as a Tier 2 measure only. Flow Through results are based on the operation of regional systems and impact CLECs equally, based on the products or feature that they order. Because this measure captures performance related to an electronic process that uses regional systems, problems that occur are not limited to individual CLECs, as intended when Tier 1 penalties apply. Flow through typically only increase the standard for measuring FOC timeliness by 7 hours. The mechanized FOC Timeliness standard is 95% in 3 hours and for orders that do not flow through and should do so, the FOC Timeliness standard is 95% in 10 hours. Such delay periodically does not directly affect the CLECs ability to provide service to its customers. As such, intermittent deficiencies, particularly with the high benchmark do not indicate a significant problem. Consequently, penalties should only apply if there are persistent problems in this area, which is the situation that Tier 2 was designed to address.</p> <p>Further, the nature of electronic</p>	<p>&gt; CLECs DISAGREE. CLECs oppose the deleted disaggregation in SEEM as problems with flow through for certain types of orders would be hidden and un-remedied if combined with a large-volume product with high flow-through rates. With so many product types lumped together, masking of CLEC-specific flowthrough problems would easily occur without sanction based on BellSouth's proposal. BellSouth's claims of "regional systems" does not negate the fact that flowthrough varies depending on what is ordered and that flow-through results by CLEC vary widely today.</p> <p>UNE Loop &amp; Port Combo and UNE-P orders are treated significantly different than a data CLEC's UNE orders. Most, if not all, of a data CLEC's UNE orders involve designed products. BellSouth's ordering process for designed products is more complex than the process used for non-designed products. By lumping all types of UNE products together, you combine very dissimilar products and the opportunity to mask poor performance on specific products increases.</p> <p>CLECs disagree with BellSouth's proposed disaggregation. See CLEC August 27, 2004 response to collapsing disaggregation.</p> <p>BST, please explain how the industry as a whole can be harmed, but not an individual CLEC.</p>	<p>&gt; See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.</p>

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
	<p>systems usually makes this problem largely self-correcting and any harm that occurs affects the industry as a whole not an individual CLEC Therefore, this measure should be included in Tier 2 only.</p> <p>Finally, since all CLECs are affectedly similarly, Tier 1 penalties should not apply. If BellSouth's performance for a given month triggers the Low Performance Fee Schedule, BellSouth will pay Tier 1 penalties in addition to Tier 2 penalty for the month involved.</p> <p>The proposed disaggregation for this measure in the SEEM plan is the same as the SQM. See the SQM matrix filed on July 28, 2004 for the rationale for this change.</p>	<p>CLECS are not all affected similarly. See attached Flow-Through Detail report for 09/04.</p>	
<p>SEEM Sub-metrics Measure O-8; (RI) Table B-1: Tier 1 Sub-metrics Remove Partially Mechanized and Non-Mechanized disaggregations for O-8, Reject Interval, from Tier 1 and Tier 2.</p>	<p>BellSouth's Proposed SQM disaggregates the Reject Interval measurement by 3 methods of submission – fully mechanized, partially mechanized and non-mechanized (manual). For an effective enforcement plan, however, only the fully mechanized portion of this measurement should be included since this is the method of submission where the preponderance of CLEC activity occurs. Also, such treatment provides a further incentive for CLECs to move to electronic system that BellSouth has expended huge resources to develop and maintain at the CLECs request. Finally, partially mechanized and non-mechanized methods of submission are subject to gaming by the CLECs. LSRs can effectively be submitted with</p>	<p>&gt; CLECs DISAGREE. All product types cannot be ordered via a fully mechanized means. However, these CLECs whose businesses rely on these product types also cannot tolerate long reject interval. This metric's disaggregation should continue to included partially mechanized and non-mechanized., as well as product level disaggregation.</p> <p>Further, the August 04 FL MSS report disputes its contention that the preponderance of LSRs are fully mechanized. Of the approximately 28,600 LSRs submitted 20% were fully mechanized, 11% were non mechanized and 70% were partially mechanized. Further, since 90% of the LSRs were submitted electronically, CLECs have</p>	<p>&gt; See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
		known errors in such a way as to guarantee a penalty payment.	largely moved to the electronic OSS. BellSouth provided no evidence to support its allegation that CLECs can or are gaming the system. Since the current SEEM plan permits BellSouth to seek adjustments for CLECs who act in bad faith, presumably it does not have any evidence.	
53	SEEM Sub-metrics Measure O-9; (FOCT) Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics Remove measure O-9, Firm Order Confirmation (FOC) Timeliness, from the both Tier 1 and Tier2.	This measure was proposed for removal from the SQM. See the SQM matrix filed on July 28, 2004 for the rationale. It should be noted that although this measure is being removed from SEEM, this function will still be measured in the new measurement <i>Firm Order Confirmation Average Completion Interval</i> (FOCI) that BellSouth is proposing to include in both Tier 1 and Tier 2 of SEEM. The FOCI measure will combine the two current measures, <i>FOC Timeliness</i> and <i>Average Completion Interval (OCI) &amp; Order Completion Interval Distribution</i> , into a single metric as requested by CLECs in the past.. Since the failure to return FOCs to CLECs in a timely manner will show up in the FOCI metric, which is proposed for both Tier 1 and Tier 2, including <i>FOC Timeliness</i> in the SEEM plan as well would result in dual penalties for the same failure. Therefore, BellSouth's proposal excludes <i>FOC Timeliness</i> from the SEEM plan.	> CLECs DISAGREE. Contrary to BellSouth's comments, BellSouth did not propose for removal of this measure from the SQM. The CLEC do not agree that the FOCI measure is appropriately structured. The artificial padding of intervals that include ILEC "FOC" times render this measure completely useless for monitoring for discrimination. See CLEC comments filed on August 27, 2004. Therefore, the FOC should be retained as a Tier 1 & Tier 2 measure.	> See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
4	SEEM Sub-metrics Measure O-11; (FOCRC) Table B-1: Tier 1 Sub-metrics Remove measure O-11, Firm Order Confirmation and Reject Response Completeness, from Tier 1 of	BellSouth's proposal excludes this measure from Tier 1 of the SEEM plan and includes it as a Tier 2 measure only. This is not a primary indicator of the timeliness or accuracy of the ordering process. The systems and	> CLECs DISAGREE. CLECs oppose removal of Tier 1 remedies. BellSouth has not explained why missing FOCs and Rejects do not harm CLECs' relationships with customers, as well as CLEC costs.	> See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
SEEM.	<p>processes that generate Reject Notices and FOCs are regional in nature and this measure simply tracks whether one of these two responses to a request was sent – not how long it takes to send it. If a response is not sent it is typically due to a system problem, which affects CLECs in general rather than only specific CLECs. Further the cure is fairly simple, which is for the CLEC to resubmit the order. Consequently this area becomes a problem only if persistent problems arise, which makes it more appropriate to include this measure in Tier 2 only. Further, Tier 1 penalties are already paid, and would be paid under BellSouth’s proposal, for the Reject Interval and FOCI measures. Further, if BellSouth’s performance for a given month triggers the Low Performance Fee Schedule, BellSouth will pay Tier 1 penalties in addition to Tier 2 penalty for the month involved.</p>	<p>It is important to measure how quickly CLECs receive a FOC or a rejection. It is equally important to measure whether CLECs received one or the other at all.</p> <p>BellSouth’s “cure” is not simple, it is very costly to the CLEC and customer affecting, since resubmitting an LSR incurs an additional service order change and further delays the provisioning of an end-user’s circuit.</p>	
<p>SEEM Sub-metrics Measure P-4 Table B-1: Tier 1 Sub-metrics &amp; Table B-2: Tier 2 Sub-metrics Remove measure P-4, Average Completion Interval (OCI) &amp; Order Completion Interval Distribution, from Tier 1 and Tier 2 of the SEEM plan.</p>	<p>Although this measure is being removed from SEEM, this function will still be measured in the new measurement <i>Firm Order Confirmation Average Completion Interval</i> (FOCI) that BellSouth is proposing to include in both Tier 1 and Tier 2 of SEEM. The FOCI measure will combine the two current measures, <i>FOC Timeliness</i> and <i>Average Completion Interval (OCI) &amp; Order Completion Interval Distribution</i>, into a single metric as requested by the CLECs in the past. Since the failure to complete orders within appropriate intervals will show up in the FOCI metric, which is proposed for both Tier</p>	<p>➤ CLECs DISAGREE. This is a key measure. The CLEC do not agree that the FOCI measure is appropriately structured. The artificial padding of intervals that include ILEC “FOC” times render this measure completely useless for monitoring for discrimination. See CLEC comments filed on August 27, 2004. Therefore, the OCI should be retained as a Tier 1 &amp; Tier 2 measure.</p>	<p>➤ See staff’s position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
		1 and Tier 2, including a separate OCI measure in the SEEM plan as well would result in dual penalties for the same failure.		
36	SEEM Sub-metrics New Measure; FOCI Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics Add the measure Firm Order Confirmation Average Completion Interval to both Tier 1 and Tier 2 of SEEM.	New measure that combines former measures FOC Timeliness and Average Completion Interval. These two functions are proposed to be in SEEM.	➤ CLECs DISAGREE. CLEC oppose this measure as a replacement for OCI Tier 1 and Tier 2 measures. See CLEC concerns in August 27, 2004 filing.	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
37	SEEM Sub-metrics Measure P-7A; HCT Table B-1: Tier1 Sub-metrics & Table B-2: Tier 2 Sub-metrics Combine the existing disaggregation levels for measure P-7A, Coordinated Customer Conversions Hot Cut Timeliness – Percent within Interval, into single a single sub-metric for “UNE Loops.”	The proposed SQM reflects two levels of disaggregation for this measure, namely “Non-IDLC” and “IDLC.” See the SQM matrix filed on July 28, 2004 for the rationale for that change. For purposes of the SEEM plan, while the proposed disaggregation for this metric in SEEM only reflects one category for “UNE Loops,” the calculations for penalties actually applies the separate benchmarks for Non-IDLC and IDLC Loops. The penalties would simply be reported as a single category designated as UNE Loops.	➤ CLECs DISAGREE. Reports should match disaggregation and penalty calculation.	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
	SEEM Sub-metrics Measure P-7C; (PT) Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics Remove measure P-7C, Hot Cut Conversions – Percent Provisioning Troubles Received within 5 Days (formerly 7 Days) of a Completed Service Order, from Tier 1 and Tier 2.	BellSouth's proposal excludes this measure from Tier 1 and Tier 2 of SEEM. This is because the same data are captured in the measure <i>Percent Provisioning Troubles within "X" Days</i> , which is included in Tier 1 and Tier 2. Including both these measures in SEEM would subject BellSouth to dual penalties for the same failure.	➤ CLECs DISAGREE. This metric specifically seeks to motivate compliant hot cut performance. Based on the proposed disaggregation for Percent Troubles within “X” Days, all UNE loop performance would be consolidated and hot cut specific performance would be masked.	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
	SEEM Sub-metrics Measure P-8 Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics	BellSouth proposed removal of this measure from the SQM. See SQM matrix filed on July 28, 2004 for the rationale.	➤ CLECs DISAGREE. CLECs oppose the deletion of this measure. It is imperative that CLECs receive trouble-free loops at installation.	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
	Remove measure P-8, Cooperative Acceptance Testing, from Tier 1 and Tier 2 of the SEEM plan.		This measure is a key indicator of the support that BellSouth gives CLECs that order xDSL loops and should not be deleted. Further, as facilities-based competition increases, so may the number of orders requiring cooperative testing.	at a later date.
60	SEEM Sub-metrics New measure: CNDD Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics Add measure CNDD, Non-Coordinated Customer Conversions – Percent Completed and Notified on Due Date, to both Tier 1 and Tier 2.	BellSouth proposes to add this new measure to both Tier 1 and Tier 2 of SEEM. This measure, as described in the SQM matrix filed on July 28, 2004, captures the percentage of non-coordinated customer conversions that BellSouth completes and provides notification to the CLEC on the due date. Considering the increased role that non coordinated hot cuts may have in the future and the potential direct impact on customer service this measure is being proposed for inclusion in SEEM.	➤ CLECs AGREE.	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
61	SEEM Sub-metrics Measures P-13B (LOOS), P-13C (LAT), and P-13D (DTNT) Table B-1: Tier 1 Sub-metrics Remove measures P-13B, LNP-Percent Out of Service < 60 Minutes, P-13C, Percentage of Time BellSouth Applies to 10-Digit Trigger Prior to the LNP Order Due Date (LAT), and P- 13D, LNP-Disconnect Timeliness (Non Trigger) (DTNT), from Tier 1 of SEEM.	BellSouth's proposal includes these three measures as Tier 2 only. These metrics evaluate a combination of largely automated processes and procedures performed by technicians in a centralized work center. The result is that the processes are the same from CLEC to CLEC and, if there is a problem, the problem affects all CLECs, rather than an individual CLEC. Consequently, a Tier-2 enforcement mechanism is appropriate for these measurements. Further, if BellSouth's performance for a given month triggers the Low Performance Fee Schedule, BellSouth will pay Tier 1 penalties in addition to Tier 2 penalty for the month involved.	➤ CLECs DISAGREE. CLECs oppose changing these measures to Tier 2 only. As facilities-based competition increases, so may the number of LNP orders. Now is not the time to eliminate incentives for BellSouth to provide compliant support. Secondly, an aggregate view of performance can easily mask poor CLEC-specific performance. If these processes are so automated and centralized, why does BellSouth need 12 hours (or even 4 hours) to work a non-rigger disconnect (Measure P-13D)?	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
62	SEEM Sub-metrics Measure M&R-2; CTRR	This measure is neither an indicator of timeliness nor accuracy of maintenance	➤ CLECs DISAGREE.	➤ See staff's position on SQM disaggregation. However, staff is

Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
<p>Table B-1: Tier 1 Sub-metrics &amp; Table B-2: Tier 2 Sub-metrics Remove measure M&amp;R 2, Customer Trouble Report Rate, from both Tier 1 and Tier 2.</p>	<p>and repair. It is not a measure of whether troubles actually exist, but is at best a broad indicator of whether customers choose to submit trouble reports. Consequently, low results do not mean that there is a performance problem, instead it simply provides information that indicates whether a part of the maintenance process needs to be examined to see if a problem exists. Experience has shown that results vary widely due to differences in the way that CLECs choose to maintain their services. For example, some CLECs do a better job of isolating troubles to their network than others. Those that don't isolate troubles well have higher trouble report rates, and it hardly seems appropriate to penalize BellSouth because a CLEC did not isolate its troubles properly. Also, very small differences in performance result in large penalties for this measure as shown in the examples in our comments. Typically, some of the highest penalties are paid for this measure, and it is typically one of the areas where the measure usually indicates a high level of performance for both CLECs and retail. For example, overall, Trouble reports rate are usually less than 3% and the difference between CLEC and retail performance is less than 2%, but the penalties are among the highest of any measure. This occurs even though for many of the reports no actual trouble exists. SEEM penalties will apply to the measures Maintenance Average Duration and Repeat Troubles, which</p>	<p>BellSouth is correct that CTRR is not an indicator of accuracy nor timeliness. CTRR is a measure of how well BellSouth maintains the network for CLEC services compared to its retail services. This measurement is very important in terms of CLECs ability to provide reliable service at parity with BellSouth retail. Further, BST and other ILECs should have this metric in part to ensure that CLECs are not put on the worst facilities in the network, and suffer greater trouble rates because of it. BellSouth provides no evidence that some CLECs do a better job of isolating troubles than others and even when CLECs do a poor job, the exclusions in the measurement provide BellSouth with protection from poor isolation.</p> <p>Furthermore, BellSouth's comment that some CLECs do a better job of isolating troubles to their network than others, doesn't take into consideration that in some cases BellSouth limits the ability of some CLECs to test for troubles at all. For example, if a Line Sharing customer has reported a trouble on a loop, BellSouth is able to run an MLT test on that loop at any time. However, the data CLEC is prohibited from running the same test to isolate troubles as long as a trouble ticket remains open. The CLEC must wait until BellSouth closes the trouble ticket to isolate troubles on the data portion of that loop. This practice puts the CLEC at a disadvantage to BellSouth and delays the CLEC's ability to repair data problems in a timely</p>	<p>requesting additional data for further analysis and may reconsider its position at a later date.</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
		together measure the accuracy and timeliness of Maintenance and Repair efforts.	manner.  This measure should remain in SEEM as it is a critical indicator of BellSouth performance.	
63	SEEM Sub-metrics Measure M&R-5 Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics Remove measure M&R-5, Out of Service (OOS) > 24 hours, from Tier 1 and Tier 2 of the SEEM plan.	BellSouth proposed removal of this measure from the SQM. See SQM matrix filed on July 28, 2004 for rationale.	➤ CLECs DISAGREE. CLECs opposed removal of this measure from SEEM. See SQM matrix filed on August 27, 2004	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
64	SEEM Sub-metrics Measure B-1 Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics For measure B-1, Invoice Accuracy, change the disaggregation to eliminate separate submetrics for Interconnection, Resale and UNE.	This metric is simply an indication of whether BellSouth provides the CLECs with accurate bills. There is no need to show separate disaggregations for Interconnection, Resale and UNE.	➤ CLECs DISAGREE. BellSouth should not be allowed to discriminate by mode of entry, and aggregate its results to mask performance.  Again, BellSouth wants to overlook the fact that performance does vary by CLEC. The billing experience of a CLEC who only resells BellSouth's service will more than likely be significantly different from the experience of a CLEC who only purchases UNEs from BellSouth.  CLECs proposed these disaggregations because the remedies should be targeted to fixing problematic area in the billing	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
65	SEEM Sub-metrics Measure B-3 Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics Remove measure B-3, Usage Data Delivery Accuracy, from Tier 1 and Tier 2 of the SEEM plan.	BellSouth proposed removal of this measure from the SQM. See SQM matrix filed on July 28, 2004 for rationale.	➤ CLEC DISAGREE. CLECs opposed removal of this measure from SEEM. See matrix filed on August 27, 2004.	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
66	SEEM Sub-metrics Measure B-10 Table B-1: Tier 1 Sub-metrics &	BellSouth proposed removal of this measure from the SQM. See SQM and Tier 2 of the SEEM plan. Matrix filed	➤ CLECs DISAGREE. CLECs opposed removal of this measure from SEEM. BellSouth is currently	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further

	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
033	Table B-2: Tier 2 Sub-metrics Remove measure B-10, Percent Billing Errors Corrected in "X" Business Days, from Tier 1	on July 28, 2004 for rationale.	failing at the Tier 2 level for this measure. BellSouth's claim of having low dollar values is false and attributed to the fact that BellSouth is inappropriately excluded claims that are disputed. Those disputed claims, which happen to be wrongfully excluded, have high dollar value. Therefore, BellSouth has no valid rationale for deleting this measure.	analysis and may reconsider its position at a later date.
7	SEEM Sub-metrics Measure C-3; PMDD Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics For measure C-3, Collocation Percent of Due Dates Missed, remove the separate disaggregations for Virtual Physical, which were further disaggregated by Initial and Augment.	This metric simply tracked whether a committed due date is met or missed. Specific disaggregation by Virtual or Physical (also Initial and Augment) is unnecessary. This especially true since BellSouth rarely missed a due date for this measure.	➤ CLECs DISAGREE. Whether or not BellSouth's performance has been at parity or not should be of no consequence to the disaggregation of this measure. Virtual and physical collocations are significantly different in nature and cost. In some cases, virtual collo arrangements are a greater source of revenue than are physical arrangements. Combining these disaggregations could mask disparate treatment, if BellSouth were to favor virtual arrangements over physical ones. The same is true for "Initial" and "Augments" as BellSouth treats initial and augment applications far too differently for them to be lumped together.	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.
8	SEEM Sub-metrics SEEM Measurement Disaggregation – General Table B-1: Tier 1 Sub-metrics & Table B-2: Tier 2 Sub-metrics Decrease the level of disaggregation for many SEEM Tier 1 and Tier 2 measurements. The measures within the Provisioning and Maintenance & Repair domains for which BellSouth proposes a reduction in disaggregation are shown below (the actual changes to the level of	As discussed concerning the excessive disaggregation in the current SQM, there are a large number of sub-metrics for which there is little or no activity month-to-month. There is, obviously, no benefit to maintaining the current level of disaggregation, which produces so many meaningless data reports. The resulting need, therefore, and the approach reflected in BellSouth's proposal, is for more aggregation rather than disaggregation. That is, grouping similar sub-metrics together for	➤ CLECs DISAGREE. CLECs agree that many submetrics in the current SEEM disaggregation have no volume for some, or even all, CLECs. Obviously, empty submetrics are of no value, but they also cause no harm. CLECs also agree that small volumes increase the statistical variation associated with ILEC/CLEC comparisons. However, this concern must be balanced against the fallacy of lumping unlike products together for performance determination. While truncated Z was	➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
	<p>disaggregation is shown in Appendix B, Tables B-1 and B-2, of the redlined SEEM plan included in this filing as Exhibit B):</p> <p><b>Provisioning</b></p> <ol style="list-style-type: none"> <li>1. PIAM: Percent Installation Appointments Met (currently reflected as P-3, Percent Missed Installation Appointments).</li> <li>2. PPT: Percent Provisioning Troubles within 5 Days (previously 30 Days) of Service Order Completion.</li> </ol> <p><b>Maintenance &amp; Repair</b></p> <ol style="list-style-type: none"> <li>1. PRAM: Percent Repair Appointments Met (currently reflected as MR-1, Percent Missed Repair Appointments)</li> <li>2. MAD: Maintenance Average Duration</li> <li>3. PRT: Percent Repeat Customer Troubles within 30 Days</li> </ol> <p>The proposed SEEM disaggregation for Pre-Ordering and Ordering measures is the same as the proposed SQM disaggregation except where already noted.</p>	<p>purposes of making more meaningful determinations of compliant performance.</p> <p>Beyond the disaggregation issues associated with the SQM, however, the design and intended functioning of the SEEM plan requires additional aggregation beyond that reflected in the SQM. Of course, the problem of the vast majority of sub-measures reflecting little or no activity is compounded in the SEEM plan for Tier 1. This is because in addition to the several levels of disaggregation in the SQM, SEEM Tier 1 calculations require further disaggregation by individual CLEC. Specifically, SEEM currently contains 830 sub-metrics at the Tier I level. There are over 200 CLECs in Florida. Since Tier I sub-metrics apply to all CLECs, there is a potential for over 166,000 SEEM determinations (830 sub-metrics x 200 CLECs). Too many sub-metrics (which are subject to further disaggregation and granularity) result in few or no transactions (or activity) in many sub-metrics. For example, an analysis of SEEM data for Florida taken from the three-month period of August through October 2003 indicated that, on average, there was no activity for 97% of the CLEC specific opportunities for the 830 SEEM measures.</p> <p>Additionally, the truncated-Z statistical methodology uses like-to-like comparisons at very granular level called cells so masking of poor</p>	<p>designed to allow aggregation of cells with difference mixes of difficulty to serve, it was not intended for combining results that differed substantially in terms of whether performance was in parity. Such heterogeneity in performance can easily mask extreme discrimination for some products if service is nondiscriminatory for others. Inappropriate aggregation will only produce flawed results. CLECs are willing to reduce disaggregation but not at the expense of accurate parity determinations.</p> <p>To address BellSouth concerns, CLECs continue to recommend a joint viewing of data at the cell level such that a joint disaggregation proposal can be developed. BellSouth continues to make claims of low volumes for some disaggregations, but has not provided it in a format that would allow other parties with access to the data to verify or invalidate those claims or to understand how combining the low volume products with other products will affect performance results. Also, in many cases, CLECs are focused on comparing like to like and are willing to drop disaggregations with no activity so long as the right retail analog for what is being ordered is used.</p>	

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05
		<p>performance by good performance is a minimal problem if it exists at all as indicated by an analysis conducted by AT&amp;T. The truncated Z methodology was specifically designed to allow aggregation of several products without creating a problem with masking. According to the design of the statistical methodology used in the SEEM plan, given that like-to-like comparisons are made at the cell level, it is unnecessary for the SEEM plan payment categories of sub-metrics to be the same as the SQM level, which is used for reporting and monitoring.</p>		
10	<p>SEEM Sub-metrics SEEM Retail Analogs B.3 Add new section to show the retail analogs for the measures in the SEEM plan.</p>	<p>Added for completeness of SEEM documentation.</p>	<p>➤ CLECS DISAGREE Inappropriate disaggregation results in inappropriate analogs.</p>	<p>➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.</p>
11	<p>SEEM Sub-metrics SEEM Benchmark Thresholds B.4 Add new section to show the benchmarks for the measures in the SEEM plan.</p>	<p>Added for completeness of SEEM documentation.</p>	<p>➤ CLECS AGREE IN PART AND DISAGREE IN PART  CLECS do not disagree to BellSouth's addition of a table showing the SEEM benchmark thresholds, however we do disagree with a majority, if not all of the thresholds BellSouth has proposed. Our disagreements with these thresholds are discussed with each metric.</p>	<p>➤ See staff's position on SQM disaggregation. However, staff is requesting additional data for further analysis and may reconsider its position at a later date.</p>
12	<p>Appendix F OSS Tables F.1 – F.2 Added the OSS designations to SEEM</p>	<p>This section was added to reflect the OSS applied to the SEEM plan parity determinations.</p>	<p>➤ CLECS AGREE IN PART AND DISAGREE IN PART  CLECS do not disagree to BellSouth's addition of a table showing OSS designations, but disagree with list. See matrix filed on August 27, 2004 for more information.</p>	<p>Staff recommends for BellSouth to delete Appendix F.</p>
13	<p>Appendix G Reposting of</p>	<p>This is the policy concerning the</p>	<p>➤ CLECS DISAGREE</p>	<p>➤ Staff recommends for BellSouth to</p>

Row	Proposed Change	BST Reasoning	CLEC Response	Staff Position 3/17/05 
	<p><u>Performance Data and Recalculation of SEEM Payments</u>                      Reposting policy added to the SEEM plan.</p>	<p>reposting of data that was approved by the Commission. This policy is included in the SEEM plan documentation for completeness.</p>	<p>CLECs are not opposed to the inclusion of the policy, but are opposed to portions of the contents. These objections have been discussed in related filings.</p>	<p>revise and incorporate reposting policy as discussed and agreed upon in SQM section of six-month review.</p>

SEEM Non-Technical Matrix  
CLEC Coalition Proposed Changes

Proposed Change	CLEC Reasoning	BST Response	Staff Position
<p><b>Administrative Review:</b> After 6 consecutive violations, the affected CLEC has the right to request an administrative review by Staff. Similarly, after 6 months of Tier 2 violations, any CLEC with volume for that measure has the right to request an administrative review.</p>	<p>At the review, the CLEC could propose additional actions to identify the source of that problem and to alleviate it.</p>	<ul style="list-style-type: none"> <li>➤ This provision is unnecessary. The CLECs have always had the right to request an administrative review whenever it believes that BellSouth's performance to CLECs is discriminatory or causes harm.</li> <li>➤ Further, while the statistical test may suggest that BST's performance was out of parity for 6 consecutive months, this does not necessarily indicate that there was a material difference between retail and CLEC performance levels.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Staff believes this provision is unnecessary, the CLECs have always had the right to request an administrative review whenever it believes that BellSouth's performance to CLECs is discriminatory or causes harm.</li> </ul>
<p><b>PARIS Reporting</b> The CLEC Coalition requests that this Commission require BellSouth to report specific information in its CLEC-specific PARIS reports for each submeasure to <b>Disclose Degree of Non-Compliance</b>.  The CLEC Coalition proposes that BellSouth be required to <b>Disclose Source of Adjustments</b> and cite detailed requirements as to what information should be disclosed and how.</p>	<p><b>Disclose Degree of Non-Compliance</b></p> <ul style="list-style-type: none"> <li>➤ Currently:                             <ul style="list-style-type: none"> <li>○ Inadequate to understand level of severity</li> <li>○ Only remedy amounts are provided</li> <li>○ No underlying data for compliance determination calculations</li> </ul> </li> <li>➤ Disclose degree of non-compliance for a given violation</li> <li>➤ Greater visibility into non-compliance determination</li> <li>➤ Better understanding of how remedy amounts were derived</li> <li>➤ Data currently reported in LA, but not necessarily useful to them</li> <li>➤ Should help to provide delta comparisons</li> </ul> <p><b>Disclose Source of All Adjustments</b></p> <ul style="list-style-type: none"> <li>➤ Currently:                             <ul style="list-style-type: none"> <li>○ No disclosed substantiation for adjustments</li> <li>○ No reference linking adjustment to a notification or description to clearly determine the source</li> <li>○ Multiple adjustments, possibly from different errors, sometimes posted in single total adjustment</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ It was unclear how the CLECs wanted the report formatted and what information it should contain. CLECs provided additional information in their responses to action items filed on 10/11/04. BellSouth is reviewing that information and will discuss in upcoming workshops.</li> <li>➤ With respect to the proposed requirement to "Disclose Source of Adjustments," BellSouth worked with several CLECs in the LA workshops and thought that the report format developed met the CLECs' identified needs.</li> <li>➤ If that format is not sufficient, BellSouth needs more definitive and specific, not general, input on the desired disclosure format CLECs are requesting. CLECs provided additional information in their responses to action items filed on 10/11/04. BellSouth is reviewing that information and will discuss in upcoming workshops.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Paris Reporting</li> <li>➤ To be discussed further (see Appendix A and Appendix B in CLEC action item responses filed 10/11/04).</li> </ul> <hr/> <ul style="list-style-type: none"> <li>➤ Staff agrees with CLEC's position</li> <li>➤ Staff recommends that an additional provision should be added after item 4.4.7 in section 4.4 Enforcement Mechanisms Payment of Tier 1 and Tier-2 amounts. The new provision should detail the procedures for disclosing source of adjustments and the requirements as to what information should be disclosed and how. [see number 32 above]</li> </ul>

Proposed Change	CLEC Reasoning	BST Response	Staff Position
<b>SEEM ADMINISTRATIVE ISSUES TO BE ADDRESSED IN SEEM CALCULATION DISCUSSIONS</b>			
<p>meaningful difference between BellSouth performance and CLEC performance. <u>CLECs/ALEC</u> the Delta value shall be determined using Ford's Delta Function as ordered by the Florida Public Service Commission. See Appendix A.</p> <p>Aggregate the Delta value shall be calculated as follows:</p>			
<p>Enforcement Mechanisms-self executing liquidated damages paid directly to each CLEC.</p> <p>Appendix B</p>			
<p><u>For each Enforcement Mechanism</u> <u>Element for which BellSouth has</u> <u>reported non-compliance. All</u> <u>penalties for individual CLECs</u> <u>will be consolidated for purposes of</u> <u>calculating Tier-1 Enforcement</u></p>			

Proposed Change	CLEC Reasoning	BST Response	Staff Position
<p><u>Mechanisms.</u></p> <p><u>3.1.4 The Standard and Low Performance Fee Schedules for Tier-1 Enforcement Mechanisms are shown in "Table 1: Liquidated Damages For Tier-1 Measures". 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: CSE/Pre-ordering, Ordering, Provisioning, Maintenance and Repair, LNP, Billing, Reconnection Trunks, Allocation, and Service Order Accuracy. Failures beyond Month 1 will be subject to Month 2 fees.</u></p>			
<p><u>3.1.5 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 Tier 1 Low Performance Fee Schedule fees will</u></p>			

Proposed Change	CLEC Reasoning	BST Response	Staff Position
<p><u>utilized for that month. 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. Additionally, if BellSouth's performance for a given month exceeds the Tier-1 Low Performance Fee Schedule, for the following Tier-2 measures, Tier-1 penalties would also apply: Firm Order Confirmation and Reject Response Completeness, LNP-Percent Out of Service&lt;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 Request.</u></p>			
<p><u>3.2.2 The Standard and Low Performance Fee Schedules for Tier-2 Enforcement Mechanisms are shown in "Table 2: Liquidated Damages For Tier-2 Measures". 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. The baseline performance level which Tier 2</u></p>			

Proposed Change	CLEC Reasoning	BST Response	Staff Position
<p>performance will compare against shall be the same as that utilized for Tier 1. Three consecutive months of failure are necessary to trigger a Tier 2 payment. The percent submetrics met for the average of three month period compared against the established baseline will be used to determine which Fee Schedule applies when calculating Tier 2 payment.</p>			
<p>4.3.2.3 Should BellSouth's performance, as measured by the average percent of submetrics met for the three months used to determine whether Tier 2 applies in the current data month, fail below three standard deviations from the established baseline level of performance, the Tier 2 Low Performance Fee Schedule will be utilized. If BellSouth's performance, as measured by the average percent of submetrics met for the three months used to determine whether Tier 2 applies in the current data month, exceeds the baseline performance by three standard deviations, no Tier 2 payment will apply in the current month.</p>			

## Exhibit C

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# ~~Self-Effectuating Enforcement Mechanism Administrative Plan Florida~~ SEEM Administrative Plan

Florida Plan  
Version 3.12.7

~~June 1, 2005~~ June 16, 2003

circumstances which may necessitate a reposting of SQM reports are detailed in Appendix F, Reposting of Performance Data and Recalculation of SEEM Payments. Such ~~penalty payments~~ shall be made to the Commission for deposit into the state General Revenue Fund within fifteen (15) calendar days of the final publication date of the report or the report revision date.

- 2.7 Tier II SEEMS payments and Administrative fines and penalties for late, ~~incomplete,~~ and reposted reports will be sent ~~via Federal Express~~ to the Commission. Checks and the accompanying transmittal letter will be postmarked on or before the 15<sup>th</sup> of the month or the first business day thereafter, when the 15<sup>th</sup> falls on a non-business day.
- 2.8 BellSouth shall retain the performance measurement raw data files for a period of 18 months and further retain the monthly reports produced in PMAP for a period of three years.
- 2.9 BellSouth will provide documentation of late and ~~incomplete occurrences~~ reposted SQM and SEEM Reports during the reporting month that the data is posted to the website. These notations may be viewed on the Performance Measurements website from the ~~P-W PMAP~~ home page on the Current Month Site Updates link.

### **3 Modification to Measures Review of Measurements and Enforcement Mechanisms**

- 3.1 ~~During the first two years of implementation, BellSouth will participate in six-month annual review cycles starting six months after the date of the Commission order. A collaborative work group, which will include BellSouth, interested CLECALECs and the Commission will review the Performance Assessment Plan for additions, deletions or other modifications. After two years from the date of the order, the review cycle may, at the discretion of the Commission, be reduced to an annual review. After the first six months of data are available under this version of SEEM, the Florida PSC Staff will have a special one-time workshop to review the operation of the Plan. Thereafter, reviews will be on an annual basis.~~
- 3.2 ~~BellSouth and the ALEC-s shall file any proposed revisions to the SEEM plan one month prior to the beginning of each review period.~~
- 3.3 ~~From time to time, BellSouth may be ordered by the Florida Public Service Commission to modify or amend the SQMs or SEEMs. Nothing will preclude any party from participating in any proceeding involving BellSouth's SQMs or SEEMs from advocating that those measures be modified.~~
- 3.2-4 In the event a dispute arises regarding the ordered modification or amendment to the SQMs or SEEMs, the parties will refer the dispute to the Florida Public Service Commission.

- 4.1.9 Affiliate – person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 Percent.
- 4.1.10 Affected Volume – that quantity of the total impacted CLEC volume or CLEC Aggregate volume for which remedies will be paid.
- 4.1.11 Cell Ranking – placing cells in rank order from highest to lowest, where the cell with the most negative z-score is ranked highest and the cell with the least negative z-score is ranked lowest.
- 4.1.12 Cell Correction – method for determining the quantity of transactions to be remedied, referred to as “affected volume,” wherein the cell-level modified z-score for the highest ranked cell is first changed to zero (“corrected”) and then the next highest, progressively, until the overall level truncated z-score is equal to the Balancing Critical Value or zero as required by the Fee Schedule. Either all of the transactions in corrected cells are remedied or a prorated share (determined through interpolation) are remedied.

## 4.2 Application

- 4.2.1 The application of the Tier-1 and Tier-2 Enforcement Mechanisms does not foreclose other legal and regulatory claims and remedies available to each CLECALEC.
- 4.2.2 Payment of any Tier-1 or Tier-2 Enforcement Mechanisms shall not be considered as an admission against interest or an admission of liability or culpability in any legal, regulatory or other proceeding relating to BellSouth's performance and the payment of any Tier-1 or Tier-2 Enforcement Mechanisms shall not be used as evidence that BellSouth has not complied with or has violated any state or federal law or regulation.

## 4.3 Methodology

- 4.3.1 Tier-1 Enforcement Mechanisms will be triggered by BellSouth's failure to achieve applicable Enforcement Measurement Compliance or Enforcement Measurement Benchmarks for each CLECALEC for the State of Florida for a given Enforcement Measurement Element in a given month. Enforcement Measurement Compliance is based upon a Test Statistic and Balancing Critical Value calculated by BellSouth utilizing BellSouth generated data. The method of calculation is set forth in Appendices C, D and E of this Plan, ~~incorporated herein by this reference~~ Statistical Formulas and Technical Description
- 4.3.1.1 All OCNs and ACNAs for individual CLECALEC s will be consolidated for purposes of calculating ~~measure~~transaction-based failures.

## Appendix A: Fee Schedule

**Table 1: Liquidated Damages For Tier-1 Measures**

Measure	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Billing	\$450	\$650	\$850	\$1,50	\$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 (CCC)	\$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

**Table 1: Fee Schedule for Tier 1 Per Transaction Fee Determination**

Performance Measure	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
OSS/Pre-Ordering	\$10	\$15	\$20	\$25	\$30	\$35
Ordering	\$20	\$25	\$30	\$35	\$40	\$45
Service Order Accuracy	\$20	\$20	\$20	\$20	\$20	\$20
Flow Through	\$40	\$45	\$50	\$55	\$60	\$65
Provisioning – Resale	\$40	\$50	\$70	\$100	\$130	\$200
Provisioning – UNE	\$115	\$130	\$145	\$160	\$190	\$230
Provisioning – UNEP	\$55	\$60	\$70	\$75	\$90	\$110
Maintenance and Repair – Resale	\$40	\$50	\$70	\$100	\$130	\$200
Maintenance and Repair – UNE	\$115	\$130	\$145	\$160	\$190	\$230
Maintenance and Repair - UNEP	\$55	\$60	\$70	\$75	\$90	\$110
LNP	\$115	\$190	\$385	\$460	\$535	\$615
Billing – BIA (see Note 1)	2%	2%	2%	2%	2%	2%
Billing – BIT	\$7	\$7	\$7	\$7	\$7	\$7
Billing – BU DT (see Note 2)	\$0.046	\$0.046	\$0.046	\$0.046	\$0.046	\$0.046
Billing – BEC (see note 3)	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07
IC Trunks	\$25	\$30	\$45	\$65	\$80	\$125
Collocation	\$3,165	\$3,165	\$3,165	\$3,165	\$3,165	\$3,165

Note 1: Reflects percent interest to be paid on adjusted amounts.

Note 2: Amount paid per 1000 usage records.

Note 3: Amount paid per dispute.

**Table 2: 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
Provisioning UNE (CCC)	\$10,400
Pre-Ordering	\$250
Change Management	\$1,000
Service Order Accuracy	\$50

**Table 2: Tier 2 Per Transaction Fee Determination**

Measure	Retail Analogs		Benchmarks
	Between BCV and 0	Below BCV	
OSS/Pre Ordering (note 1)	\$6	-	\$30
Ordering	-	-	\$60
Service Order Accuracy	-	-	\$60
Flow Through	-	-	\$120
Provisioning – Resale	\$26	\$120	-
Provisioning – UNE	\$76	\$345	\$345
Provisioning – UNEP	\$36	\$165	-
Maintenance and Repair – Resale	\$26	\$120	-
Maintenance and Repair – UNE	\$76	\$345	-
Maintenance and Repair –UNEP	\$36	\$165	-
LNP	\$36	\$165	-
Billing – BIA (note 1)	1.3%	-	-
Billing – BIT (note 1)	\$4	-	-
Billing – BUDT (note 1)	\$0.03	-	-
Billing – BEC (note 1)	\$0.04	-	-
Change Management	-	-	\$1,000
IC Trunks	\$16	\$75	\$75
Collocation	-	-	\$9,495

Note 1: The truncated z does not apply to these measures.