

Robert A. Culpepper
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0841

March 28, 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:

Please find enclosed for filing an updated, redlined SEEM Administrative Plan. As directed by the Commission Staff, appendices are not included. Additionally, certain sections are subject to on-going discussions with the CLEC Coalition. Such sections have not been revised from BellSouth's previously submitted proposed language. 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 28th day of March, 2005 to the following:

Adam Teitzman
Jerry Hallenstein
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6175
Fax. No. (850) 413-6250
ateitzma@psc.state.fl.us
jhallens@psc.state.fl.us

Tracy W. Hatch
AT&T
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
Tel. No. (850) 425-6360
Fax. No. (850) 425-6361
thatch@att.com

Sonia Daniels
AT&T
1230 Peachtree Street
Suite 400
Atlanta, GA 30309
Tel. No. (404) 810-8488
Fax. No. (281) 664-9791
soniadaniels@att.com

Verizon, Inc.
Kimberly Caswell
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110
Tel. No. (813) 483-2617
Fax. No. (813) 223-4888
kimberly.caswell@verizon.com

Nanette Edwards (+)
Regulatory Attorney
ITC^DeltaCom
4092 S. Memorial Parkway
Huntsville, Alabama 35802
Tel. No. (256) 382-3856
Fax. No. (256) 382-3936
nedwards@itcdeltacom.com

Peter M. Dunbar, Esquire
Karen M. Camechis, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
Post Office Box 10095 (32302)
215 South Monroe Street, 2nd Floor
Tallahassee, FL 32301
Tel. No. (850) 222-3533
Fax. No. (850) 222-2126
pete@penningtonlawfirm.com

Brian Chaiken
Supra Telecommunications and
Information Systems, Inc.
2620 S. W. 27th Avenue
Miami, FL 33133
Tel. No. (305) 476-4248
Fax. No. (305) 443-1078
bchaiken@stis.com

Michael A. Gross
Vice President, Regulatory Affairs
& Regulatory Counsel
Florida Cable Telecomm. Assoc.
246 East 6th Avenue
Tallahassee, FL 32303
Tel. No. (850) 681-1990
Fax. No. (850) 681-9676
mgross@fcta.com

Susan Masterton
Charles J. Rehwinkel
Sprint
Post Office Box 2214
MS: FLTLHO0107
Tallahassee, Florida 32316-2214
Tel. No. (850) 599-1560
Fax. No. (850) 878-0777
susan.masterton@mail.sprint.com

Donna Canzano McNulty (+)
MCI
1203 Governors Square Blvd.
Suite 201
Tallahassee, FL 32301
Tel. No. (850) 219-1008
donna.mcnulty@mci.com

Brian Sulmonetti
MCI WorldCom, Inc.
6 Concourse Parkway, Suite 3200
Atlanta, GA 30328
Tel. No. (770) 284-5493
Fax. No. (770) 284-5488
brian.sulmonetti@wcom.com

William Weber, Senior Counsel
Gene Watkins (+)
Covad Communications
1230 Peachtree Street, N.E.
19th Floor, Promenade II
Atlanta, Georgia 30309
Tel. No. (404) 942-3494
Fax. No. (508) 300-7749
wweber@covad.com
jbell@covad.com
qwatkins@covad.com

John Rubino
George S. Ford
Z-Tel Communications, Inc.
601 South Harbour Island Blvd.
Tampa, Florida 33602
Tel. No. (813) 233-4630
Fax. No. (813) 233-4620
gford@z-tel.com

Vicki Gordon Kaufman
Moyle Flanigan Katz Raymond
& Sheehan, PA
118 North Gadsden Street
Tallahassee, FL 32301
Tel. No. (850) 681-3828
Fax. No. (850) 681-8788
vkaufman@moylelaw.com
Represents KMC Telecom
Represents Covad
Represents Mpower

Jonathan E. Canis
Michael B. Hazzard
Kelley Drye & Warren, LLP
1200 19th Street, N.W., Fifth Floor
Washington, DC 20036
Tel. No. (202) 955-9600
Fax. No. (202) 955-9792
jacanis@kelleydrye.com
mhazzard@kelleydrye.com

Tad J. (T.J.) Sauder
Manager, ILEC Performance Data
Birch Telecom of the South, Inc.
2020 Baltimore Avenue
Kansas City, MO 64108
Tel. No. (816) 300-3202
Fax. No. (816) 300-3350

John D. McLaughlin, Jr.
KMC Telecom
1755 North Brown Road
Lawrence, Georgia 30043
Tel. No. (678) 985-6262
Fax. No. (678) 985-6213
jmclau@kmctelecom.com

Andrew O. Isar
Miller Isar, Inc.
7901 Skansie Avenue
Suite 240
Gig Harbor, WA 98335-8349
Tel. No. (253) 851-6700
Fax. No. (253) 851-6474
aisar@millerisar.com

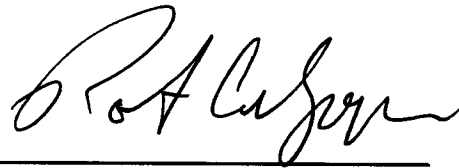
Renee Terry, Esq.
e.spire Communications, Inc.
7125 Columbia Gateway Drive
Suite 200
Columbia, MD 21046
Tel. No. (301) 361-4298
Fax. No. (301) 361-4277

Mr. David Woodsmall
Mpower Communications, Corp.
175 Sully's Trail
Suite 300
Pittsford, NY 14534-4558
Tel. No. (585) 218-8796
Fax. No. (585) 218-0635
dwoodsmall@mpower.com

Suzanne F. Summerlin, Esq.
Attorney At Law
2536 Capital Medical Blvd.
Tallahassee, FL 32308-4424
Tel. No. (850) 656-2288
Fax. No. (850) 656-5589
summerlin@nettally.com

Dulaney O'Roark III (+)
WorldCom, Inc.
Six Concourse Parkway
Suite 3200
Atlanta, GA 30328
Tel. No. (770) 284-5498
De.OROark@mci.com

Ann Shelfer
Supra Telecommunications
1311 Executive Center Drive
Suite 220
Tallahassee, FL 32301
Tel. No. (850) 402-0510
Fax. No. (850) 402-0522
ashelfer@stis.com



Robert A. Culpepper

**(+) Signed Protective
Agreement**

#502166

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

Florida Plan
Version 3.12.7

March 28, 2005 ~~June 16, 2003~~

1: Administrative Plan

1 Scope

- 1.1 This Administrative Plan (Plan) includes Service Quality Measurements (“SQM”) with corresponding Self Effectuating Enforcement Mechanisms (“SEEM”) to be implemented by BellSouth pursuant to the Order issued by the Florida Public Service Commission (the “Commission”) on September 10, 2001 in Docket 000121-TP.
- 1.2 Upon the Effective Date of this Plan, all appendices referred to in this Plan will be located on the BellSouth Performance Measurement Reports website at: <https://pmap.bellsouth.com>.

2 Reporting

- 2.1 In providing services pursuant to the Interconnection Agreements between BellSouth and each CLECALEC, BellSouth will report its performance to each CLECALEC in accordance with BellSouth's SQMs and pay penalties in accordance with the applicable SEEMs, which are posted on the Performance Measurement Reports website.
- 2.2 BellSouth will make performance reports available to each CLECALEC on a monthly basis. The reports will contain information collected in each performance category and will be available to each CLECALEC via the Performance Measurements Reports website. BellSouth will also provide electronic access to the ~~available~~ raw data underlying the SQMs.
- 2.3 Final validated SQM reports will be posted no later than the last day of the month following the data month in which the activity is incurred, or the first business day thereafter. Final validated SQM reports not posted by this time will be considered late.
- 2.4 Final validated SEEM reports will be posted on the Performance Measurements Reports website on the 15th day of the month, following the posting of final validated SQM reports for that data month or the first business day thereafter.
- 2.5 BellSouth shall pay penalties to the Commission, in the aggregate, for all late SQM and SEEM reports in the amount of \$2000 per day. Such penalty payment 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 late publication of the report occurs.
- 2.6 BellSouth shall pay penalties to the Commission, in the aggregate, for all ~~incomplete or inaccurate~~ reposted SQM and SEEM reports in the amount of \$400 per day. The 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 15th of the month or the first business day thereafter, when the 15th 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.~~
- 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 Enforcement Mechanisms

4.1 Definitions

- 4.1.1 *Enforcement Measurement Elements* –performance measurements identified as SEEM measurements within the SEEM Plan.
- 4.1.2 *Enforcement Measurement Benchmark compliance* – a competitive level of performance established by the Commission used to evaluate the performance of BellSouth and each for CLECALECs where no analogous retail process, product or service is feasible.
- 4.1.3 *Enforcement Measurement ~~Retail~~ ~~analog~~ compliance* – comparing performance levels provided to BellSouth retail customers with performance levels provided by BellSouth to the CLECALEC customer for measures where retail analogs apply.
- 4.1.4 *Test Statistic and Balancing Critical Value* –means by which enforcement will be determined using statistically valid equations. The Test Statistic and Balancing Critical Value are set forth in Appendix ~~C, incorporated here by this reference~~ D, Statistical Formulas and Technical Description.
- 4.1.5 *Cell* –grouping of transactions at which like-to-like comparisons are made. For example, all BellSouth retail ISDN (POTS) services, for residential customers, requiring a dispatch in a particular wire center, at a particular point in time will be compared directly to CLECALEC resold ISDN 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 ~~C, incorporated herein by this reference~~ D, Statistical Formulas and Technical Description, attached.
- 4.1.6 *Delta* –measure of the meaningful difference between BellSouth performance and CLECALEC performance. For individual CLECs~~ALEC~~ the Delta value shall be determined using Ford's Delta Function as ordered by the Florida Public Service Commission. See Appendix ~~C, incorporated herein by this reference~~ 1.0 and for the CLEC aggregate the Delta value shall be 0.5.
- 4.1.7 *Tier-1 Enforcement Mechanisms* – self-executing liquidated damages paid directly to each CLECALEC when BellSouth delivers non-compliant performance of any one of the Tier-1 Enforcement Measurement Elements for any two consecutive months as calculated by BellSouth.
- 4.1.8 *Tier-2 Enforcement Mechanisms* – 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 enforcement measurement elements at the submetric level in which BellSouth performance is out of compliance or does not meet the benchmarks for the aggregate of all CLECALEC data, ~~as calculated by BellSouth for a particular Tier-2 Enforcement Measurement Element.~~

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.

4.2 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~~ for two (2) consecutive months. Liquidated damages will be applicable to each of the two months of failure. 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 Appendix D, ~~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.

4.3.1.2 When a measurement has five or more transactions for the CLECALEC, calculations will be performed to determine remedies according to the methodology described in the remainder of this document.

4.3.1.3 Tier-1 Enforcement Mechanisms apply on a per ~~measurement~~ transaction basis ~~and will escalate based upon the number of consecutive months that~~ for each Enforcement Mechanism Element for which BellSouth has reported non-compliance. All transactions for individual CLECs will be consolidated for purposes of calculating Tier-1 Enforcement Mechanisms.

4.3.1.4 ~~Fee Schedule for Tier-1 Enforcement Mechanisms is shown on the Performance Measurement Reports in Table 1 of Appendix A, incorporated herein by this reference. Failures beyond Month 6 will be subject to Month 6 fees~~

- 4.3.1.4 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: OSS/Pre-ordering, Ordering, Provisioning, Maintenance and Repair, LNP, Billing, Interconnection Trunks, Collocation, and Service Order Accuracy. Failures beyond Month 2 will be subject to Month 2 fees.
- 4.3.1.5 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 be 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 triggers 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 <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.
- 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. ~~The based upon the method of calculation is set forth in Appendix D, incorporated herein by this reference~~ Statistical Formulas and Technical Description.
- 4.3.2.1 Tier- 2 Enforcement Mechanisms apply, for an aggregate of all ~~CLECA~~LEC data generated by BellSouth, on a ~~per measurement transaction~~ basis for a particular each Enforcement Mechanism Element for which BellSouth has reported non-compliance.
- 4.3.2.2 ~~Fee Schedule for Total Quarterly Tier 2 Enforcement Mechanisms is shown in Table 2 of Appendix A, incorporated herein by this reference. Unlike the method used for other Tier 2 metrics, which imposes payments after results fall below the benchmark for three consecutive months, Tier 2 payments for Flow Through will be paid each month BellSouth fails to meet the benchmark.~~
- 4.3.2.2 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 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

the three month period compared against the established baseline will be used to determine which Fee Schedule applies when calculating a Tier 2 payment.

- 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, fall 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 data month.

4.4 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 CLECALEC 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 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.
- 4.4.2 For each day after the due date that BellSouth fails to pay a CLECALEC the required amount, BellSouth will pay the CLECALEC 6% simple interest per annum.
- 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.
- 4.4.4 If a CLECALEC disputes the amount paid for Tier-1 Enforcement Mechanisms, the CLECALEC shall submit a written claim to BellSouth within sixty (60) days after the payment due date. BellSouth shall investigate all claims and provide the CLECALEC written findings within thirty (30) days after receipt of the claim. If BellSouth determines the CLECALEC is owed additional amounts, BellSouth shall pay the CLECALEC such additional amounts within thirty (30) days after its findings along with ~~6Percent%~~ 6Percent% simple interest per annum. ~~However, the CLEC 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 CLEC 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.~~
- 4.4.5 ~~At the end of each calendar year, an independent accounting firm, mutually agreeable to the Florida Public Service Commission and BellSouth, shall certify that all penalties under Tier 1 and Tier 2 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. 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.~~

4.4.6 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 F of this document. 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 recalculations for a maximum of three months in arrears...") unless the Florida Commission orders otherwise.

4.4.7 Any adjustments for underpayments or overpayments 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.

4.5 **Limitations of Liability**

4.5.1 ~~BellSouth's total liability for the payment of Tier 1 and Tier 2 Enforcement Mechanisms shall be collectively and absolutely capped at 39Percent of net revenues in Florida, based upon the most recently reported ARMIS data.~~

4.5.2 BellSouth will not be responsible for 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 an ALEC acts or omissions that cause failed or missed performance measures. to be missed or to be missed, These acts or omissions includinge but are not limited to, accumulation and submission of orders at unreasonable quantities or times, failure to follow publicly available procedures, or failure to submit accurate orders or inquiries. BellSouth shall provide each CLEC the ALEC and the Commission with reasonable notice of, and supporting documentation for, such acts or omissions, and provide the ALEC with any such supporting documentation. Each CLEC shall have 10 business days from the filing of such Notice to advise BellSouth and the Commision in writing of its intent to challenge, through the dipute 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.

- ~~4.5.32~~ BellSouth shall not be obligated for Tier 1 or Tier 2 Enforcement Mechanisms for non-compliance with a performance measure if such non-compliance was the result of an act or omission by ALEC that was in bad faith.
- ~~4.5.42~~ BellSouth shall not be obligated for penalties under 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 of the following: a Force Majeure event; an act or omission by an ALEC that is contrary to any of its obligations under the Act, Commission rule, or state law; or an act or omission associated with third party systems or equipment. 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 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; provided, however, that BellSouth shall use diligent efforts to avoid or remove such causes of non-performance.
- 4.5.2.1 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.
- 4.5.2.2 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.
- 4.5.2.3 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. 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.
- 4.5.2.4 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.
- ~~4.5.53~~ In addition to these specific limitations of liability, BellSouth may petition the Commission to consider a waiver based upon other circumstances.

4.6 Affiliate Reporting Change of Law

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 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. Performance Measurements and remedy plans that have been ordered by the Commission can currently be accessed via the Internet at <http://pmap.bellsouth.com>. 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.

4.6 Affiliate Reporting

4.6.1 BellSouth shall provide monthly results for each metric for each BellSouth ~~CLECALEC~~ affiliate; ~~however, only~~ Upon request, the Florida Public Service Commission shall be provided the number of transactions or observations for BellSouth ~~CLECALEC~~ affiliates. Further, BellSouth shall inform the Commission of any changes regarding non-~~CLECALEC~~ affiliates' use of its OSS databases, systems, and interfaces.

4.7 Enforcement Mechanism Cap

4.7.1 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..

4.7.2 If projected payments exceed the state cap, a proportional payment will be made to the respective parties.

4.7.3 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.

4.8 Audits

4.8.1 BellSouth currently provides CLECs with certain audit rights as a part of their individual interconnection agreements. If requested by a Public Service Commission, BellSouth will agree to undergo a SEEM audit. The audit should be conducted by an

independent third party auditor. The results of audits will be made available to all the parties subject to proper safeguards to protect proprietary information. Audits will be conducted under the following specifications:

1. The cost shall be borne by BellSouth.
2. Should an independent third party auditor be required, it shall be selected by BellSouth and the PSC.
3. BellSouth and the PSC shall jointly determine the scope of the audit.
4. The PSC may request input regarding selection of the auditor and audit scope from interested parties.

These audits are intended to provide the basis for the PSCs and CLECs to determine that SEEM produces accurate data that reflects each State's Order for performance measurements.

4.79 Dispute Resolution

- 4.79.1 Notwithstanding any other provision of the Interconnection Agreement between BellSouth and each CLECALEC, if a any dispute 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.

4.10 Regional and State Coefficients

Some metrics are calculated for the entire BellSouth region, rather than by state. 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.

A state coefficient is calculated to split Tier 2 payments for regional metrics among states by submetric.