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December 6, 2004

BY ELECTRONIC FILING
Ms. Blanca Bayó, Director
The Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 000121A-TP

Dear Ms. Bayó:

Attached please find the CLEC Coalition's Response to Action Items from the November 8-9 SEEM Workshop in the above-referenced docket. Pursuant to the Commission's Electronic Filing Requirements, this version should be considered the official copy for purposes of the docket file. Copies of this document will be served on all parties via electronic and U.S. Mail.

Thank you for your assistance with this filing.

Sincerely yours,

s/ Tracy W. Hatch

Tracy W. Hatch

TWH/scd
Attachment
cc: Parties of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the CLEC's Response was served by U.S. Mail this 6th day of December 2004 to the following:

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s/ Tracy W. Hatch
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the Establishment of Operations Support System Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies (BellSouth Track)	))))))	Docket No. 000121A-TP Filed: December 6, 2004

CLEC COALITION RESPONSE TO SEEM WORKSHOP ACTION ITEMS

Competitive Local Exchange Carriers ("CLECs"), AT&T Communications of the Southern States, LLC; Birch Telecom; DIECA Communications Company d/b/a Covad Communications Company ("Covad"); ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom/BTI"); MCImetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc.; and Network Telephone Corp., hereinafter collectively referred to as the "CLEC Coalition," hereby file the following responses to the Florida Public Service Commission Staff's ("Staff's") request that answers be supplied for the following Action Item from the November 8-9, 2004 SEEM Workshop:

Action Item 1: Provide comments on which measures would be candidates for reporting two months of data.

Response:

CLECs would not oppose measuring and reporting sub-metric level performance every two months for certain "low volume" services for Tier I penalties. (However, the SQM reports should remain monthly to permit timely monitoring of service performance.) For purposes of combining two months of data, services would be considered low volume if the median volume of transactions for individual CLECs was 15 or less per month for the most recent six months available at the time of this designation. Sub-metrics designated as "low volume" would be re-evaluated at each plan review.

Penalty payments should be adjusted as follows:

CLECs would not require an adjustment for a transaction based plan because the number of disparate transactions might be expected to double for a two month period. For a measure based plan, remedy amounts would need to be adjusted upward if **all** sub-metrics were switched to bimonthly assessment. For this scenario, CLECs recommend an adjustment to increase all values of B by approximately the square root of 2. However, if the assessment period is increased only for low volume submetrics, as proposed by the CLECs, the CLECs would agree not to adjust the remedy formula.

Impact on Tier II Calculations:

As volumes for Tier II metrics are based on Tier I aggregate results, it is not necessary to make changes to Tier II calculations. (Tier II would not combine two months data.)

Action Item 2 - Minimum Remedy Payments

a. Propose a definition of nascent services, what products currently fit this category, how should they be treated, how many in service, over what period of time

Response:

By its nature, the measure based plan proposed by CLECs avoids the need for adjustments to protect nascent services. If a transaction based plan is adopted, the CLECs recommend that a market penetration adjustment, which includes nascent services, also be adopted. Following is proposed language, based on the Georgia SEEM plan:

Market penetration adjustment.

BellSouth shall implement a market penetration adjustment for new, advanced or other services that are expected to grow, but have to date achieved only negligible levels of market penetration.

1. In order to ensure parity and benchmark performance where CLECs order low volumes of advanced and nascent services, BellSouth shall make additional payments to CLECs and the Commission when there are more than 10 and less than 100 observations for those sub-measures listed below on average statewide for a three-month period. (This list is preliminary and should be subject to true-up prior to issuance of any Commission Order)

- Percent Missed Installation Appointments
  - UNE EELs
  - UNE xDSL
  - UNE ISDN
  - UNE Line Sharing
  - UNE Line Splitting
- Average Completion Interval
  - UNE EELs
  - UNE xDSL
  - UNE ISDN
  - UNE Line Sharing
  - UNE Line Splitting
- Missed Repair Appointments
  - UNE EELs
  - UNE xDSL
  - UNE ISDN
  - UNE Line Sharing
  - UNE Line Splitting
- Maintenance Average Duration
  - UNE EELs
  - UNE xDSL
  - UNE ISDN
  - UNE Line Sharing
  - UNE Line Splitting

- Average Response Time for Loop Make-Up Information (Not currently disaggregated-manual analysis required)
  - UNE DS1 and above
  - UNE EELs
  - UNE xDSL
  - UNE ISDN
  - UNE Line Sharing
  - UNE Line Splitting

(CLECs may also need to revise this recommended list after issuance of the FCC's TRO Order.)

2. The additional payments referenced in 1, above, shall be made if BellSouth fails to provide parity service for the above measurements as determined by the use of the Truncated Z-Test and the balancing critical value or fails to meet the standard for benchmark measures in a given month for Tier I or in 3 consecutive months for Tier II.

3. If, for the three months that are utilized to calculate the rolling average, there were 100 observations or more on average for the sub-metric, then no additional payments under this market penetration adjustment provision will be made to the CLECs or to Commission for deposit with the State Treasury. On the other hand, if during the same time frame there is an average of more than 10 but *less* than 100 observations for a sub metric on a statewide basis, then BellSouth shall calculate the additional payments to CLECs and the Commission by trebling the per transaction amounts in the normal Tier I and Tier II fee schedules and applying the method of calculating remedies ordered by the Commission.

4. Any payments made under this market penetration adjustment provision are subject to the Absolute Cap set by the Commission.

b. What other circumstances warrant a minimum payment, low volume, etc?

Response:

CLECs believe that if the fee schedule, disaggregation, standards, and escalations for chronic violations are set appropriately, no additional minimum payment schedule is needed. For example, fees for low volume, high impact services such as collocation and change management must be high enough to incent BellSouth not to discriminate against CLECs. Disaggregation must be sufficient to avoid masking discrimination. The cell level disaggregation and truncated z methodology alone are not sufficient. For example, non-dispatch and dispatch services involve separate processes and separate work groups, and should be disaggregated. Similarly, loops with conditioning are provisioned very differently than those without conditioning. Fee schedules for chronic lack of compliance, in the event the basic schedule is too low, should be in place to incent BellSouth to improve its performance.

b. How should any minimum penalty amount be established?

Response:

See responses to a and b above.

Action Item 3: Provide comments on alternative (to BellSouth and Staff proposals) methods to establish varying fee schedules based on overall performance.

Background

BellSouth proposed three options for fee schedules to be implemented, based on BellSouth's level of overall performance for a given month, as compared to baseline performance. BellSouth's stated rationale for the proposed change was:

1. Provides a provision to deter back-sliding
2. Provides an additional incentive to improve performance
3. Eliminates a flaw in the proposed plan that requires BellSouth to provide better service to CLECs

Based on concerns with BellSouth's proposal to use one overall level of performance that aggregates all sub-measures and measures[1], Staff proposed an alternative method of evaluating performance, which stratified performance by product groupings and weighted the various domains of performance metrics within those product groupings. Both BellSouth and the CLECs expressed some concerns with Staff's proposal. Staff then asked the parties to suggest additional alternatives for using varying levels of performance to trigger different levels of fees for non-compliant performance. In particular, the Staff asked the parties to comment on the following proposal:

If a given submeasure in Tier 2 passes, but fails in Tier 1 one fee schedule (a lower fee schedule) would apply.

If a given submeasure in Tier 2 fails, and it fails in Tier 1 a different fee schedule (a higher fee schedule) would apply.

[1] CLECs have strong concerns with BellSouth's proposed fee schedules as well as how it proposes to measure performance to "activate" a particular fee schedule.

Response:

Regarding BellSouth's rationale 1 above, CLECs strongly disagree that the anemic and non-existent fee schedules proposed by BellSouth are sufficient to deter back-sliding, much less ensure compliant performance. Further, the use of overall performance that allows BellSouth to determine an overall fee schedule permits it to provide even worse performance for particular metrics and/or CLECs. (See Row 6 of CLEC technical matrix for additional concerns and arguments against BellSouth's proposal.)

Regarding BellSouth's rationale 2 above, CLECs are not opposed to lesser penalties (and greater penalties) based on level of compliance. The severity mechanism proposed by the CLECs was designed for just such purposes. In response to Staff's request that parties comment on its latest proposal described above, the CLECs provide the following comments:

CLECs are receptive to the proposal because it avoids the problem of aggregation across products and/or domains.[2] Consequently, irrelevant results for one submetric do not affect remedies associated with violations for another submetric. However, CLECs have concerns that this proposal offers little protection against discrimination toward a specific CLEC, nor does it address the severity of the failure of a given sub-measure.

Regarding rationale 3 above, CLECS do not agree that BellSouth provides better service to CLECs than it provides itself. BellSouth has provided no evidence that it has methods and procedures or processes by which its systems and personnel are directed to systematically provide superior performance to that it provides itself. Further, to the extent that BellSouth made

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[2] Based on its strong concerns about the appropriateness of a plan that would permit scenarios of decreasing fee schedules that would be applied to deteriorating performance, CLECs were unable to create a recommendation that further modified the BellSouth or original Staff proposal.

this proposal to (once again) address its alleged low volume/Type 1 error concerns, CLECs do not believe BellSouth's proposal is an appropriate method of dealing with those concerns. It certainly is an illogical and inappropriate solution to pay less (or not at all) when you do discriminate because you have concerns that you sometimes pay when you do not (especially when the reverse is also true). Further, the Staff is currently considering methods of reducing instances of low volumes such as examining areas for reduced disaggregation, and combining two months of data for "low volume" sub-metrics.

Respectfully submitted this 6th day of December, 2004.

CLEC COALITION

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