**Matilda Sanders**

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**Sent:** Friday, January 21, 2005 3:26 PM
**To:** Filings@psc.state.fl.us
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**Subject:** RE: 000121A -- CLEC Response to Staff's Strawman Proposal

CLEC Resp
aff Strawman

\> Docket No. 000121A-TP -- In re: Investigation into the Establishment of Operations Support system Permanent Performance
\> Measures for Incumbent Local Exchange Telecommunications Companies
\> (BellSouth track)
\>
\>
\> Attached please find for electronic filing the CLEC Coalition's Response to Staff's Strawman Proposal for filing in the above-referenced docket. The cover letter, certificate of service and the CLEC Coalition's Response are a total of 14 pages. The attached document should be considered the official version for purposes of the docket file.
\>
\> As indicated in the cover letter, copies of this filing are being distributed to parties via electronic (in cases where e-mail addresses are available) and U.S. Mail. Thank you for your assistance in this matter.
\>
\> > > <<CLEC Resp to Staff Strawman Proposal 1-21-05 Final.pdf>>
\>
\>
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\> on behalf of Tracy Hatch
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January 21, 2005

**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 Staff's Seem Strawman Proposal* regarding BellSouth's SQM Six-Month Review 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 Reply was served by U.S. Mail this 21st day of January 2005 to the following:

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*s/ Tracy W. Hatch*
*Tracy W. Hatch*

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

| | |
|---|---|
| IN RE: | |
| PERFORMANCE MEASUREMENTS FOR TELECOMMUNICATIONS INTERCONNECTION, UNBUNDLING AND RESALE | DOCKET NO. 000121A-TP |
| | FILED: JANUARY 21, 2005 |

**CLEC COALITION'S RESPONSE TO STAFF'S SEEM STRAWMAN PROPOSAL**

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), AT&T Communications of the South Central States ("AT&T"), MCImetro Access Transmission Services, LLC ("MCI"), ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom/BTI") and Nuvox Communications (collectively, the "CLEC Coalition") file this Response to Staff's SEEM Strawman provided to the parties on December 13, 2004.

## I. Measure-Based vs. Transaction-Based Plan

As Staff noted on page 1 of its Strawman proposal, the issue comes down to which plan provides better incentives for BellSouth to provide parity performance. The CLEC Coalition agrees. While the CLECs believe that the Staff's Strawman proposal is a significant improvement over BellSouth's proposal, the CLECs continue to believe that a properly constructed measure-based plan provides better incentives than a transaction-based plan. A measure-based plan is especially important for protecting small CLECs or CLECs with low volume of services. Otherwise, the remedy payment structure provides an incentive to provide worse service, in order to suppress CLEC volumes. According to BellSouth, low volumes are a significant issue. BellSouth has continually raised concerns regarding alleged low volumes in its efforts to have its proposed plan adopted by the Commission.[1] *(The CLECs note that the Staff has proposed considerable reductions to the level of disaggregation that should adequately address BellSouth's concerns).* However, lower volumes for some services will continue for individual CLECs, and may continue in order to provide appropriate performance standards in some cases as well. A measure-based plan is essential to adequately protect those critical scenarios from discrimination.

In its Strawman proposal, the Staff commented on aspects of the CLEC measure-based proposal and made the observations listed below. Also described below are the CLECs' responses to Staff's observations about the CLEC proposal.

a. The new severity mechanism proposed by the CLECs does not attempt to ensure dollar neutrality.

To the CLECs, it did not make sense to artificially attempt to maintain dollar neutrality as part of a review where the set of measures and the disaggregation were likely to change substantially. However, the CLEC proposal did aim at rough dollar comparability, in stark contrast to BellSouth's proposal, which would certainly have slashed remedy payments dramatically.

b. The CLEC plan does not provide a direct link from existing payments and volumes to payments. The proposal does provide an indirect link through the B coefficient.

[1] For example, see Action Item 4 of BellSouth's October 20, 2004 Comments.

Staff's assessment is correct. The CLECs' proposal uses a payment function very similar to ones previous considered by Staff as means to incorporate severity into a measure-based system. The primary difference is that CLECs proposed to benchmark payments against absolute levels of disparity, through the B parameter, rather than against historical levels of disparity.

c. The Staff is concerned that the CLECs' severity mechanism requires the use of constraints to help maintain appropriate fee levels.

These constraints invariably reduce remedy amounts in response to concerns that had previously been raised, mainly by BellSouth. Each of the constraints involves application of a simple floor or ceiling, so that they add little complexity to the CLEC plan. Indeed, the CLEC proposal is not only much closer to the current Florida plan, but also much simpler that any transaction-based plan because it does not require any calculation of disparate transactions.

d. The Staff acknowledges that the CLECs proposed payment function is logical at a basic level, but notes that certain components of the function could just as easily be expressed in a different manner and still be logical.

Certainly, there are logical alternatives to any payment function, whether measure or transaction based. The CLEC proposal was designed to change as little as possible from the existing plan (e.g., compliance determination, escalation factors) while incorporating severity.

In summary, while the CLECs believe that the Staff's Strawman proposal is a significant improvement over BellSouth's proposal, CLECs continue to believe that a measure-based plan offers the best incentives for BellSouth to provide parity service for all scenarios of services purchased by CLECs. However, in the event the Staff continues to support a transaction-based plan, the CLECs provide the following comments on the remainder of the Strawman proposal.

## II. Priority Cell Rankings

Any ranking of cells is arbitrary, reflecting the inherent futility of trying to count disparate transactions for mean measures. However, within the context of the proposed algorithm, which requires ranking cells by some factor, the CLEC coalition has no objection to the use of z-score as the ranking factor.

## III. Cell Correction (Parity Point versus Detection Point)

Any count of disparate transactions must include all transactions back to the parity point—i.e., all transactions requiring correction in order for truncated z to reach zero. Once performance has been determined to be in violation, the goal should be to estimate the magnitude of disparity in the process. The best, and unbiased, way to estimate disparate transactions is relative to the parity point and not the detection point. Using the detection point would condone all but the most egregious sub parity performance. Consequently, all transactions up to the parity point must be treated as disparate.

CLECs believe that it makes sense to use the same fee schedule for all disparate transactions for a submeasure. Nonetheless, CLECs would be willing to support the use of different fee schedules for disparate transactions identified with statistical certainty (beyond the BCV) as opposed to transactions identified with less certainty (between the BCV and zero). However, this support would be contingent on adequate fee schedules for the two sets of transactions (see next section).

## IV. Amounts per Transaction

In its August 18, 2004 Comments, BellSouth stated in its rationale to justify its proposed fee structure that it is "more in line with rebates in commercial transactions where performance guarantees are provided." However, there is no logical connection between commercial rates and the amounts that are needed to motivate improving inferior service processes. In practice, CLECs believe that commercial rates are generally far too low to do the job. Further, the Staff expressed concern during the workshops and in its Strawman proposal, given BellSouth's strong market position, whether such an approach was appropriate. The Staff further stated in its Strawman proposal on page 1, "BellSouth's incentive is tied more to the dollars paid," and that "because measuring harm is difficult (if not impossible), our objective is to ensure that BellSouth has sufficient incentive to provide parity level performance to the CLECs."

Given that BellSouth's proposal only covered a "rebate" of some level of one-time service charges and did not even attempt to address other costs or harm[2] suffered by

[2] The fee schedule falls far short, even as compensation for damages suffered. For example, these rates miss many types of costs that a CLEC faces when BellSouth fails to perform as required—e.g., a CLEC's own ordering and provision costs. Furthermore, customers may be lost before they are even installed. Revenue losses may correspond to multiple years of service, and this revenue may not just be from POTS type services but more enhanced applications and long distance services. In addition, word of

CLECs, much less provide an incentive for BellSouth to provide parity, CLECs are very concerned with the Staff's proposal to use BellSouth's amounts per transaction as the basis for the fee schedule.

Specifically, the CLECs strongly urge the Staff to adopt its own fee schedule, based on benchmarks from other states[3]. The overall performance and escalation fees could then be applied to that schedule. CLECs recommend that, at a minimum, the Florida starting transaction fees be comparable to those in Georgia.

## VI. Overall Performance

The CLECs concur with Staff's decision to reject BellSouth's fatally flawed proposal to choose among three fee schedules based on an overall measure of BellSouth's performance. Besides being far too aggregate, the measure itself was inappropriate for use in SEEM. These fundamental problems left the proposal impossible to repair.

The CLECs do support Staff's proposal to base per transaction remedy amounts on aggregate performance (across CLECs) for the same submeasure. A finding of noncompliance for a submeasure at a statewide level provides evidence that violations for specific CLECs reflect an overall pattern of poor performance rather than random anomalies. Consequently, this provision focuses remedy payments on the submeasures where there is the most evidence of performance problems. CLECs are willing to support the Staff's proposal of a factor of 2.0, contingent on an adequate fee schedule.

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mouth from these departing customers may chill the CLECs market growth as well. Also see pages 5 and 6 of the CLEC Response to the Technical Matrix filed on November 15, 2004 for additional information.

[3] See benchmark data included in CLEC comments filed November 15, 2004.

## VII. Minimum Remedy Amount

The CLEC coalition supports Staff's proposal for applying a minimum remedy amount to nascent services. We agree that the proposal should apply to both Tier I and Tier II payments, so that chronic non-compliance as well as discrimination against individual CLECs can be addressed.

## VII. Escalation

CLECs agree that the proposed escalation or persistence factor is an essential feature of the Strawman proposal. Repeated violations are the surest evidence of systemic problems that require special attention to correct. Without sufficient escalation in remedy payments, BellSouth will very likely lack incentive to fix systemic problems. While Tier II payments offer some protection against systemic problems that affect all CLECs, they may be ineffective when poor performance occurs for a subset of CLECs. Furthermore, Tier II payments do not incorporate any escalation at all for long term violations. Consequently, the plan must include these escalation factors. The escalation factor of up to four times the transaction amount is reasonable, with some states with lower factors and other states with higher factors.[4]

## VIII. Two Months of Data versus One Month of Data

The CLEC coalition supports Staff's proposal not to combine two months of data for compliance determinations (and not to require violations in two consecutive months before payment of remedies, as proposed by BellSouth). The nature of a transaction-based plan, which limits remedy payments at small volumes, sharply reduces the consequences of any Type I errors for low volumes. Furthermore, the revised SQM

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[4] For example, Michigan has a month 6 penalty amount that is over 6 times greater than month 1.

disaggregation proposed by Staff would eliminate many of the lower volume submeasures that are in the current SEEM plan. Consequently, the CLECs agree that no action is required to combine months in any way.

## IX. Conclusion

In conclusion, the CLECs continue to believe that a measure based plan, with modifications, should remain in place in Florida. Further, CLECs believe that the Staff's Strawman is a significant improvement over BellSouth's proposal and appreciate the Staff's thoughtful and innovative approaches to addressing issues raised in this proceeding. However, the CLECs are deeply concerned that the fee schedule is inadequate to motivate BellSouth to provide non-discriminatory performance. The CLECs look forward to continuing to work with Staff and BellSouth to develop a SEEM plan that serves the interests of Florida consumers and competition.

Respectfully submitted this 21st day of January, 2005.

<u>CLEC COALITION</u>

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