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. (AT&T FLORIDA TRACK)	DOCKET NO. 000121A-TP ORDER NO. PSC-09-0667-PAA-TP ISSUED: October 6, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING WAIVER OF REPOSTING PENALTY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I.   **Case Background**

By Order No. PSC-01-1819-FOF-TP, issued September 10, 2001, in Docket No. 000121A-TP, we adopted a wholesale Performance Assessment Plan for the purpose of monitoring performance levels of Operations Support Systems (OSS) provided to Competitive Local Exchange Companies (CLECs). The Order also recognizes this Commission's vested authority, per Section 364.01(3), Florida Statutes, to provide regulatory oversight necessary to ensure effective competition in the telecommunications industry. This docket has remained open since that time to address issues and concerns arising from OSS performance.

AT&T's wholesale Performance Assessment Plan provides a standard against which CLECs and this Commission can measure performance over time to detect and correct any degradation of service provided to CLECs. The Performance Assessment Plan is comprised of a Service Quality Measurement (SQM) plan and a Self-Effectuating Enforcement Mechanism (SEEM) remedy plan. The SQM plan includes a comprehensive and detailed description of AT&T's performance measurements, while the SEEM remedy plan details the methodology for

payments to CLECs (Tier 1) and to the State of Florida (Tier 2) when AT&T's performance fails to meet the SQM standards. The SQM Plan currently consists of 50 measurements of which 35 measures have applicable SEEM remedy payments, if AT&T fails to meet the performance standards as agreed by the parties and approved by this Commission.

Pursuant to Section 2.6 of the SEEM Administrative Plan, AT&T shall pay fines to this Commission, in the aggregate, for all reposted SQM reports in the amount of $400 per day. On June 11, 2009 AT&T filed a petition for waiver of the $400 per day reposting penalty. The reposting stemmed from an error in the coding of performance measurement data. AT&T noted that, absent the relief being sought in the petition, the reposting of the corrected data would result in AT&T paying a fine of approximately $35,200 in Florida.

II.   Jurisdiction

We are vested with jurisdiction over this matter pursuant to Sections 364.01(3) and (4)(g), Florida Statutes. Pursuant to Section 364.01(3), Florida Statutes, the Florida Legislature has found that regulatory oversight is necessary for the development of fair and effective competition in the telecommunications industry. To that end, Section 364.01(4) (g), Florida Statutes, provides, in part, that this Commission shall exercise our exclusive jurisdiction in order to ensure that all providers of telecommunications service are treated fairly by preventing anticompetitive behavior. Furthermore, the FCC has encouraged the states to implement performance metrics and oversight for purposes of evaluating the status of competition under the Telecommunications Act of 1996.

III.   Analysis

In providing services pursuant to the interconnection agreements between AT&T and each CLEC, AT&T is required to report its Service Quality Measurement (SQM) performance data results to each CLEC. On the last business day of each month, AT&T posts monthly SQM data to its Performance Measurements and Analysis Platform (PMAP) website.

When AT&T proposes to make any changes to the methods by which SQM data is calculated, AT&T must provide a written notice to this Commission to inform our staff of the changes. The notice, known as the PMAP Data Notification Report, is filed monthly in this Docket and is subsequently discussed on a collaborative conference call which includes AT&T, CLECs, and our staff.

In AT&T's April 30, 2009 PMAP Data Notification Report, AT&T noted that an error was discovered in the coding that is used to post information for the P-11 Service Order Accuracy performance measurement.[1] The error was discovered by AT&T after performing an analysis of the PMAP code and resulted in transactions not being mapped to the appropriate level

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[1] The Service Order Accuracy report measures the accuracy and completeness of CLEC requests for service by comparing the CLEC local service request (LSR) to the completed service order after provisioning has been completed.

of product disaggregation.[2] According to AT&T, some local number portability (LNP) transactions were mapped and recorded to the resale disaggregation when the transactions should have been mapped and recorded to the UNE disaggregation. As a result, AT&T was posting inaccurate monthly data results to its PMAP website.

Pursuant to Appendix D of the SQM Plan, AT&T is required to repost the performance measurement data if the (1) the aggregate performance is in an "out of parity" condition and, (2) the recalculated data results in a greater than or equal to 2% decline in performance at the sub-metric or disaggregated level.[3] Both of these criteria were met when AT&T corrected the code to properly map the transactions for the Service Order Accuracy performance measurement. As a result, AT&T was required to repost the data.

Additionally, Appendix D of the SQM Plan requires performance data to be reposted for a maximum of three months in arrears from date of detection. In this case, the Service Order Accuracy coding error was discovered during the analysis of the March 2009 report month. As a result, this error would trigger a reposting beginning with the report months of detection, March 2009, and three months preceding, December 2008, January 2009, and February 2009.

Section 2.6 of the SEEM Administrative Plan mandates that AT&T will pay a fine to this Commission in the amount of $400 per day for all SQM reports that have to be reposted. However, if the reposting is associated with a PMAP Data Notification, a maximum of ninety days is applied to the fine.[4] In this case, the error discovered by AT&T was part of the PMAP Data Notification process.

Upon applying the maximum of ninety days, AT&T calculated the $400 per day count starting on February 2, 2009 (the first business day of February) through April 30, 2009 (the date the error was reported in AT&T's PMAP Notification Report). In sum, AT&T would have to pay $35,200 in reposting fines for 88 days of uncorrected reports. Per section 2.6 of the SEEM Administrative Plan, the payments are to be deposited in the state General Revenue Fund.

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[2] Disaggregation is the process of breaking down performance data into specific categories or product types such as resale, UNEs, trunks, and loops. Theses product types can be broken down further into residential or business customers so that like-to-like comparisons can be made from wholesale to retail. Disaggregation is important to the remedy plan because it prevents non-compliant performance in one area from being masked by compliant performance in another area.

[3] Item 3 of Appendix D in the SQM Plan states, "SQM performance sub-metric calculations with benchmarks where statewide aggregate performance is in an "out of parity" condition will be available for reposting whenever there is a >=2% decline in BellSouth's [now AT&T] performance at the sub-metric level.

[4] Section 2.6 of the SEEM Administrative Plan states, "BellSouth [now AT&T] shall pay fines to the Commission, in the aggregate, for all reposted SQM reports in the amount of $400 per day. If such reposting is associated with any Data Notification, a maximum of ninety (90) days may be deducted from the fine. 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 payments shall be made to the Commission for deposit into the state General Revenue Fund within (15) calendar days of the final publication date of the report or the report revision date.

AT&T's June 11, 2009 Petition

In its petition, AT&T is seeking relief of the $400 per day reposting penalty as required by section 2.6 of the SEEM Administrative Plan. The inaccurate SQM reporting would result in a total penalty of $35,200 to the state of Florida and $316,800 in reposting fines in AT&T's nine-state southeast region.

It is AT&T's position that although section 2.6 of the SEEM Administrative Plan asserts a $400 per day reposting penalty, AT&T cites Section 4.5.3 of the SEEM Administrative Plan wherein AT&T is entitled to "petition the Commission to consider relief based upon other circumstances." AT&T contends that given the circumstances that CLECs incurred no harm, and that AT&T acted in good faith by identifying and self-reporting this error, a penalty of this magnitude is unduly excessive and inconsistent with purposes of the reposting obligation.

More importantly, AT&T further noted in its filing that the coding changes made to the SQM performance results do not affect the coding used to calculate SEEM remedies. AT&T stated that "all SEEM remedy obligations and SEEM liability calculations were correctly processed at all times, and all CLECs have received the appropriate payments under the SEEM Plan."

IV. Decision

The parameters set forth in the reposting policy are designed to ensure that any data that changes in a "meaningful way" should be reposted retroactively. In this instance, the recalculated difference in the data was such a unique situation that it did not trigger inaccurate SEEM remedies.

AT&T confirmed that this is the first instance where the reposting of the SQM performance reports had no impact on SEEM remedy calculations or payments. The SEEM remedy code was properly performing the remedy Tier 1 and Tier 2 calculations even though the SQM performance reports were incorrect. In all previous instances where a reposting of the SQM reports were required, the reposting was accompanied by a reprocessing of SEEM remedy calculations and payments. We are unaware of any CLECs that have disputed any material facts surrounding the reposting of the SQM performance data for P-11 Service Order Accuracy.

We find that AT&T has acted in good faith by identifying and self-reporting this error in the SQM performance data. However, since AT&T is responsible for compiling and warehousing the aggregate performance data, AT&T would be the only entity that would be able to discover the error.

This docket has remained open to not only monitor the quality of service AT&T provides to CLECs, but to also periodically conduct a formal review of AT&T's wholesale Performance Assessment Plan. In June of this year, our staff initiated its fourth review of the Plan since its inception in 2001. The specifics and language currently in the reposting policy are currently being reviewed by the parties and our staff for any necessary revisions.

We note that the South Carolina, North Carolina, and Kentucky Public Service Commissions each granted AT&T's petition for a waiver of fines incurred given the specific circumstances arising in this case. Each Commission further noted that their decision is not intended to be precedent-setting, and any future petitions of this nature should be considered on a case-by-case basis.

Our staff's analysis of this issue included a request of all audits performed by AT&T or an outside party since July 2007 to ensure accuracy of programming code associated with SQM and SEEM data. AT&T reported that since July 2007 only one audit has been conducted of SEEM 2005 penalty payment disbursements. No audits were reported that verified the accuracy of SQM data.

In conclusion, we find that AT&T's request for waiver of reposting penalties in this instance to be a unique circumstance. However, we continue to be concerned about AT&T's efforts to ensure quality of SQM data. AT&T is encouraged to audit the SQM data on a more frequent basis.

We hereby grant AT&T's petition to waive the reposting penalty in the amount of $35,200 payable to the state General Revenue Fund.

This docket shall remain open pending the implementation of our decision and for purposes of future performance measure monitoring.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AT&T's petition to waive the reposting penalty in the amount of $35,200 payable to the state General Revenue Fund is granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall remain open pending the implementation of our decision and for purposes of future performance measure monitoring.

By ORDER of the Florida Public Service Commission this 6th day of October, 2009.

Ann Cole

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Commission Clerk

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 27, 2009.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.