

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 5, 2008

CBEYOND, TWTC, AND DELTACOM'S RESPONSE TO AT&T

Cbeyond Communications, LLC (Cbeyond), Time Warner Telecom, LP (TWTC), and DeltaCom, Inc. (Deltacom) (jointly referred to herein as CLECs, Petitioners, or the Parties), through their undersigned counsel, hereby file their Response to BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast's (AT&T) request that the CLECs' Complaint be dismissed. This request should be denied. As grounds therefor, CLECs state:

BACKGROUND

1. On May 12, 2008, CLECs filed a Complaint, Request for Audit, and Request for Stay of CLEC OSS-Related Releases. As described in detail in CLECs' Complaint, beginning on April 19, 2008, AT&T's operations support system (OSS) failed in critical areas, resulting in CLECs' inability to utilize the necessary functionalities of the system to service their current customers and to bring new customers on line. Thus, CLECs requested that the Commission institute an independent audit of the incidents and prevent AT&T from releasing any more software changes that would affect CLECs until the audit was completed and the results of the audit incorporated into AT&T's OSS release. Further, CLECs requested that the Commission show cause AT&T and require it to explain in detail all the circumstances surrounding implementation of the OSS release and why it should not be penalized for its failure to appropriately implement the OSS release.

2. On May 15, 2008, Commission Staff conducted two meetings with AT&T. At the first meeting, AT&T personnel described its plans for future releases. CLEC participation in this meeting was not permitted. At the second meeting, AT&T personnel attempted to describe what occurred as a result of the April 19th release and steps AT&T was taking to correct problems the release caused. CLECs participated in this meeting. At this meeting, AT&T personnel admitted that errors had been made and that the release had caused harm to CLECs.

3. On May 27, 2008, AT&T filed a letter with the Commission detailing actions it proposes to take to remedy the deficiencies associated with the April 19th release.¹

4. On June 2, 2008, AT&T filed an Answer to the CLECs' Complaint and requested that the Commission enter an order dismissing the Complaint.² Attached to AT&T's document was the same May 27th letter referenced above.

STANDARD OF REVIEW FOR A MOTION TO DISMISS

5. AT&T's request that CLECs' Complaint be dismissed must be summarily denied. Under Florida law, the purpose of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action.³ To prevail on a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as true, the petition fails to state a cause of action for which relief can be granted.⁴

ALLEGATIONS

6. Not only do the "four corners" of the CLECs' Complaint demonstrate that they have stated a cause of action, AT&T's own actions and filings support the CLECs' claims. For example, in the May 15th meetings, AT&T personnel termed the April 19th release

¹ Exhibit A to Answer.

² Answer at 12.

³ *Varnes v. Dawkins*, 624 So.2d 349, 350 (Fla. 1st DCA 1993).

⁴ *Id.* at 350.

“unacceptable,” said that the OSS systems did not function properly, and admitted that CLEC orders were delayed causing a large order backlog. AT&T also acknowledged that such problems continued to persist.

7. Moreover, AT&T’s May 27th letter, sent after the May 15th meetings, demonstrates that there is no dispute that AT&T’s April 19th release was highly flawed and that the release caused the OSS, on which CLECs depend to process their orders, to malfunction. AT&T itself titles section II of its May 27th letter “April Release Defect Resolution.”

8. But most telling is AT&T’s Answer. AT&T itself reiterates numerous times:

AT&T Florida acknowledges that a variety of CLEC-impacting issues arose in connection with the April Release in the Southeast region. . . .⁵

AT&T also admits that:

orders submitted by Cbeyond, Time Warner, DeltaCom, and other CLECs have been impacted by the April Release.⁶

9. AT&T further acknowledges that OSS problems still exist and that remaining “known” defects are “expected to be resolved later this month.”⁷ AT&T avers that “current processing is *mostly* ‘business as usual.’”⁸ Put another way, there are OSS problems that, even over a month after the April 19th events, have not been corrected. And the cause of the failure has yet to be identified.

10. In the face of these severe, industry-impacting problems, AT&T’s view is one of “trust me.” AT&T pledges to use “best efforts” to resolve the problems.⁹ This appears to be the basis for AT&T’s position that the CLECs’ Complaint should be disregarded. However,

⁵ Answer at 2. *See also*, ¶ 6, p. 5; ¶ 8, p. 5; ¶ 9, p.6; ¶ 10, pp. 6-7; ¶ 14, p. 8; ¶ 17, p. 8, ¶ 21, p. 10.

⁶ *Id.* at ¶ 12, p. 7.

⁷ *Id.* at p. 3-4.

⁸ *Id.* at ¶ 6, p. 5, emphasis added.

⁹ *See, i.e.*, Answer at ¶ 9, p.6.

given the severity of this on-going event, such an approach should be as unacceptable to the Commission as it is to CLECs.

11. Thus, the Commission should immediately begin the process of an independent audit of the April 19th OSS failure as CLECs have requested. Of particular importance is that an independent auditor perform an appropriate root analysis of the April 19th release failure so that the causes of the failure can be clearly identified and prevented in the future.

12. While a root cause analysis of the April 19th events is critical, AT&T makes little mention of it in its May 27th letter or in its Answer. The information it does provide on this important issue is contradictory.

13. In the only mention of a root cause analysis in its May 27th correspondence, AT&T says it will use a “root cause analysis of release defects to expand its Testing Plans.”¹⁰ Avoiding defects in future releases requires a thorough analysis of what *caused* the past defects. The purpose of testing is to find defects. A root cause analysis is the only way to find why there were any defects in the release. The April 19th outage had *over 40 Severity 1 defects*. While CLECs agree with AT&T that inadequate testing was a serious problem in AT&T’s processes, CLECs’ primary concern is that there were over 40 Severity 1 defects to find (as well as numerous other Severity 2 and 3 defects). More importantly, AT&T has failed to detail how, if at all, it intends to conduct a root cause analysis (what level of truly independent judgment will be applied), to whom the results will be reported, or whether and how the results will be incorporated into future OSS releases.

¹⁰ May 27th Follow Up document at 2.

14. At least one potential root cause identified by an AT&T whistle-blower¹¹ is that the OSS defects were a result of cost-cutting measures.¹² The whistle-blower's familiarity with this case and the outsourcing of AT&T's information technology to AMDOCS, Inc. lends credence to the warning that the Commission "should closely scrutinize ATT's plans and processes for remaining wholesale software releases in 2008 and 2009." Whatever the cause of the April 19th failure, it must be investigated and analyzed by independent experts so that such incidents are prevented in the future. No plan has yet been set forth to do that.

15. AT&T's comments assume the outcome of a root cause analysis. The analysis must first be conducted to determine the cause of the problem. Then the problem can be addressed.

16. The AT&T Answer has one reference to a root cause analysis. In contradiction to the May 27th letter, it states that "AT&T's internal review and expanded test plan (see Exhibit A [May 27th letter]), will include any *necessary* root cause analysis of the April Release issues."¹³ This suggests that a root cause analysis will be done *if and only if* AT&T decides to do one and further that AT&T (the same entity responsible for the OSS failure) will conduct the analysis and determine what to do with the results, if anything. AT&T's promises of possible self-analysis of its own failures are totally inadequate, given the severity, breadth and length of this OSS debacle.

17. AT&T's contradictory statements and the lack of an appropriate root cause analysis further emphasize the need for an independent review of the April 19th events. The sooner the independent audit begins, the sooner the causes of the numerous defects can be identified, corrected, and prevented in the future.

¹¹ See email filed with Commission on May 11, 2008 suggesting that the source of many of the OSS problems was outsourcing and development work done by offshore programmers.

¹² Exhibit 1.

¹³ Answer at ¶ 26, p.11, emphasis added.

WHEREFORE, CLECs request that the Commission:

1. Deny AT&T's request that the CLECs' petition be dismissed;
2. Immediately begin the process of the selection of an independent auditor;
3. Conduct an independent audit as to the root cause(s) of the failure AT&T's OSS, which began on April 19th;
4. Require the results of the independent audit to be implemented before any further OSS software releases are implemented; and
5. Issue a show cause order that requires AT&T to explain and document in detail all circumstances surrounding the April 19th release.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the Response to AT&T was served via Electronic Mail and U.S. Mail this 5th day of June, 2008 to the following:

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s/ Vicki Gordon Kaufman
Vicki Gordon Kaufman

Ann Cole

From: Ann Cole
Sent: Friday, May 23, 2008 12:34 PM
To: Bridget Grimsley
Subject: RE: ATT April 2008 CLEC Wholesale Release

CONSUMER

Thanks Bridget. This will be placed in *Docket Correspondence-Consumers and their Representatives*, Docket No. 000121A-TP.

From: Bridget Grimsley
Sent: Friday, May 23, 2008 12:08 PM
To: Ann Cole
Subject: FW: ATT April 2008 CLEC Wholesale Release

Ann,

Can you place this in the correspondence side of docket 000121A– consumers? Thanks.

Bridget

From: Beth Salak
Sent: Friday, May 23, 2008 11:59 AM
To: Bridget Grimsley
Subject: RE: ATT April 2008 CLEC Wholesale Release

It's 000121A. This isn't about the software per se. It's about the wholesale service level that ATT provides to CLECs. The failure of the software caused many, many CLEC customer orders to be delayed.

From: Bridget Grimsley
Sent: Friday, May 23, 2008 11:42 AM
To: Beth Salak
Subject: FW: ATT April 2008 CLEC Wholesale Release

Beth,

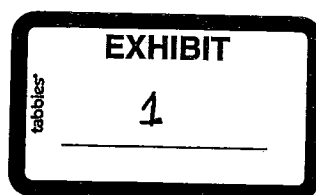
I am trying to figure out which docket the email below belongs in. Can you help me? I don't think we regulate software releases.

Bridget

From: Concerned Att Employee [mailto:concernedattemployee@yahoo.com]
Sent: Sunday, May 11, 2008 8:36 PM
To: Office of the Chairman; Office Of Commissioner Edgar; Office of Commissioner McMurrian; Office of Commissioner Argenziano; Office of Commissioner Skop
Subject: ATT April 2008 CLEC Wholesale Release

Commissioners

5/23/2008



DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

The recent operational support difficulties attributed to ATT for the April 2008 CLEC Wholesale release are due to the following reasons:

- 1) ATT outsourced its wholesale information technology organization to AMDOCS, Inc. in May 2007,
- 2) Key critical and knowledgeable resources left the organization after the outsourcing arrangement and have not been replaced,
- 3) Most development work is completed by offshore programmers who have no wholesale business knowledge, and
- 4) Poor planning by the ATT Wholesale Business Unit.

You should closely scrutinize ATT's plans and processes for remaining wholesale software releases in 2008 and 2009. There are issues that may not have been disclosed in hearings.

A Concerned ATT Employee

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