

BEFORE THE 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
ORDER NO. PSC-05-0488-PAA-TP
ISSUED: May 5, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING SETTLEMENT AGREEMENT

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.

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 we shall exercise exclusive jurisdiction in order to ensure that all providers of telecommunications service are treated fairly by preventing anticompetitive behavior. Furthermore, it is noted that 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.

By Order No. PSC-01-1819-FOF-TP, issued September 10, 2001, in Docket No. 000121A-TP, we adopted a Performance Assessment Plan for purposes of monitoring performance levels of Operations Support Systems provided to CLECs. The Performance Assessment Plan is comprised of a Service Quality Measurement Plan (SQM) and a Self-Effectuating Enforcement Mechanism (SEEM) Administrative Plan. The SQM is a comprehensive and detailed description of BellSouth's performance measurements. BellSouth's

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FPSC-COMMISSION CLERK

SQM Plan currently consists of 90 measurements with each related to a specific portion of BellSouth's Operations Support Systems. The SEEM Plan includes key measures to which remedy payments are applied if BellSouth fails to meet the performance standards as agreed by the parties and approved by this Commission.

Some modifications to the Performance Assessment Plan were made in 2002 as a result of Operations Support Systems testing by Bearing Point. Additionally, a review of the Performance Assessment Plan was conducted in 2003. Order Nos. PSC-03-0529-PAA-TP and PSC-02-1736-PAA-TP delineated changes to the SQM Plan and the SEEM Administrative Plan.

In May 2004, BellSouth filed a motion for the establishment of a new Performance Assessment Plan in Florida that was subsequently withdrawn. In July 2004, we initiated a second review of the current Performance Assessment Plan. A series of workshops and conference calls resulted in our staff proposing significant changes to the SQM and SEEM plans. In January 2005, BellSouth and interested parties began negotiating on some of the more controversial aspects of the plan. In April 2005, our staff was notified that a settlement between the parties had been reached.

As part of FPSC Order No. PSC-0187A-FOF-TP, BellSouth is required to participate in review cycles to discuss any proposed changes to the Performance Assessment Plan. In June 2004, our staff solicited comments on proposed changes to BellSouth's current Performance Assessment Plan in preparation for the second review cycle.

BellSouth proposed consolidating duplicative measures and eliminating unnecessary measures (i.e., those measures that consistently contain little or no activity on a monthly basis). As part of its proposal, BellSouth also recommended a shift from the current measurement-based remedy calculation approach to a transaction-based approach. Under the current measurement-based plan, BellSouth contended that huge penalties are paid for very small differences in performance between retail and CLEC results. Through the transaction-based approach, BellSouth proposed to modify the SEEM plan to make remedy payments more in line with performance. In other words, monthly payments would be directly proportional to BellSouth's performance in comparison with the standard.

The CLECs proposed to maintain the current structure of BellSouth's performance measures and SEEM plan with some refinements. One such refinement was to build on the existing measure-based plan and incorporate a severity component into the remedy calculation. Under the current plan, the CLECs argued that once service is poor enough to trigger a violation, all further performance degradation has no impact on the remedy amount, no matter how bad the performance becomes. The CLECs' proposal for incorporating severity into the remedy calculation was to correct this omission.

Taking into consideration the comments provided by both BellSouth and the CLECs, our staff conducted several workshops and weekly conference calls from September 2004 through March 2005. The purpose of the workshops and calls were to gauge the effectiveness of BellSouth's performance measures and to determine whether the current remedy structure is

effective in driving BellSouth's performance toward the required standards. The workshops and conference calls also gave the parties an opportunity to raise specific issues and to propose changes to the Performance Assessment Plan that constituted reasonable solutions.

As a result of the staff workshops and conference calls, our staff developed proposals to modify BellSouth's SQM and SEEM plans. Our staff proposed to streamline the Service Quality Measurement plan by reducing the total number of performance measures, reducing the level of disaggregation, modifying standards, and making miscellaneous changes of an administrative nature.

Our staff's proposed modifications to BellSouth's SEEM plan incorporated aspects of proposals from both BellSouth and the CLECs, with care being taken to develop a reasonable compromise between the parties' positions and interests. Our staff's proposal was based on a transaction-based plan and included a modification to the SEEM fee schedule. The fee schedule was differentiated in two ways, based on aggregate performance and level of certainty of the failure.

With slight modifications to our staff's proposal, BellSouth and the CLECs entered into a stipulated agreement on April 5, 2005, to execute changes to BellSouth's current Performance Assessment Plan. The parties strived to ensure the newly stipulated plan is workable and effective and believe that adoption of the proposed changes to the Performance Assessment Plan will adequately measure and assess BellSouth's operations support systems performance in Florida. We find that the stipulated Performance Assessment Plan is an improved and more efficient performance monitoring mechanism.

Accordingly, we hereby approve the stipulated changes to BellSouth's Performance Assessment Plan for Florida as reflected in the Settlement Agreement dated April 18, 2005 (Attachment 1). The parties have informally agreed to implement these changes with the June 2005 performance measurement data.¹

This Order shall become final upon issuance of a Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance. This Docket shall remain open thereafter to continue annual reviews and the one-time six-month review as specified in the Settlement Agreement between the parties.

¹ Failures in a SEEM submeasure result in remedies that escalate for each successive month of failure. Transitioning to the new Performance Assessment Plan requires BellSouth to restart "failed month" counters. To partially compensate CLECs and the state of Florida for lost penalties during the transition, BellSouth has proposed a transitional plan described in a BellSouth E-mail to our staff, dated April 19, 2005. We find that BellSouth's transitional plan is fair and reasonable.

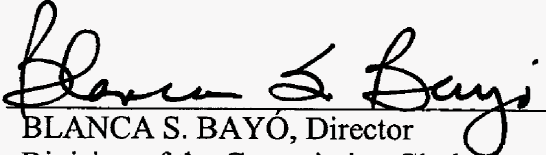
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the stipulated changes to BellSouth's Performance Assessment Plan for Florida as set forth in Attachment 1 are hereby approved. 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 Director, Division of the Commission Clerk and Administrative Services, 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 thereafter to continue annual reviews and the one-time six-month review as specified in the Settlement Agreement between the parties.

By ORDER of the Florida Public Service Commission this 5th day of May, 2005.


BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 26, 2005.

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.

ORIGINAL

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: April 18, 2005

SETTLEMENT AGREEMENT

WHEREAS, in May 2004, BellSouth Telecommunications ("BellSouth"), filed a motion for the establishment of a new performance measurement plan in Florida;

WHEREAS, in July 2004, the Florida Public Service Commission ("Commission") commenced a periodic review of BellSouth's performance measurement plan, and in connection therewith BellSouth filed comments, a redlined version of its proposed Service Quality Measurement Plan ("SQM"); and a matrix explaining its proposed SQM revisions;

WHEREAS, in August 2004, BellSouth filed comments, a redlined version of its proposed Self-Effectuating Enforcement Mechanism Plan ("SEEM"), and a matrix explaining its proposed SEEM revisions;

WHEREAS, the competitive local exchange carrier ("CLEC") Coalition filed SQM comments in July 2004, and SEEM comments in August 2004;

WHEREAS, in September 2004, the Commission Staff commenced holding properly noticed workshops and conference calls, open to all interested parties, to consider proposed SQM and SEEM revisions;

WHEREAS, the Commission Staff, based on input from the parties, has made numerous recommendations regarding revisions to the SQM and SEEM plans, including issuing two SEEM Strawman Proposals;

WHEREAS, BellSouth, the CLEC Coalition, and other interested parties (collectively, "Parties") have considered Staff's various recommendations, and

NOW THEREFORE, for good and valuable consideration, including the mutual promises made herein, the Parties agree as follows:

1. Parties agree to the redlined versions of the SQM and SEEM plans provided to the CLEC Coalition and other interested parties on April 14, 2005, a copy of which is attached ("Agreed Plan").
2. Parties agree not to oppose any Staff and/or Commission action necessary to approve the Agreed Plan.
3. Parties agree that the Agreed Plan will be subject to an annual periodic review as more fully set forth in the Agreed Plan; however at the end of the first six months following implementation of the Agreed Plan in Florida, the Parties agree to participate in an informal review of the Agreed Plan.
4. This agreement is conditioned on Commission approval of the Agreed Plan, without a hearing. If any objection to Commission approval of the Agreed Plan results in undue delay and/or a hearing, the Parties reserve all rights they may have, including the right to propose further revisions to the SQM and SEEM plans.
5. Parties agree to jointly propose the approval of the Agreed Plan in the other states where BellSouth provides local service.

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ATTACHMENT 1

Docket No. 000121A-TP
Settlement Agreement
Filed: April 18, 2005

AGREED AND ACCEPTED:

BELLSOUTH TELECOMMUNICATIONS, INC.

BY: William N. Stacy 4-18-05
William N. Stacy
Network Vice President – Interconnection Operations

CLECs – CLEC signatures begin on the next page.

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ATTACHMENT 1

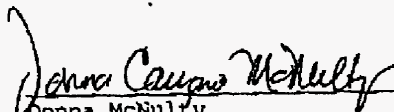
Settlement Agreement
Filed: April 18, 2005

AGREED AND ACCEPTED:

Tracy Hatch
AT&T Communications of the Southern
States, LLC
101 N. Monroe St., Suite 700
Tallahassee, FL 32301

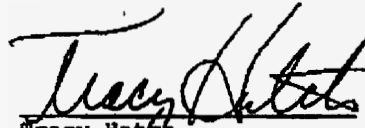
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Settlement Agreement
Filed: April 18, 2005

AGREED AND ACCEPTED:



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ATTACHMENT 1

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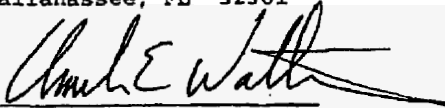
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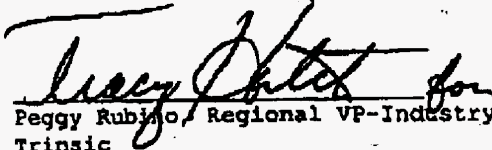
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ATTACHMENT 1

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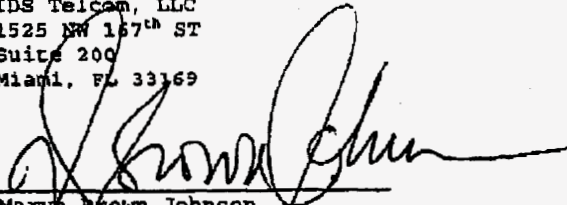
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“Agreed Plan”

For attachments (SQM and SEEM Plans) to the settlement agreement, see the .pdf of Document No. 03753-05, in Docket No. 000121A-TP, on the Commission's Website or in the Case Management System on the Commission's network.