

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-09-0165-PAA-TP
ISSUED: March 23, 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 ALLOWING
AT&T TO MOVE FORWARD WITH THE NEXT 22-STATE OSS RELEASE

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, this Commission adopted a Performance Assessment Plan for the purpose of monitoring performance levels of Operations Support Systems (OSS) provided to CLECs. The performance measurement 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. AT&T's performance measurement plan also includes a Self-Effectuating Enforcement Mechanism (SEEM) remedy plan which includes payments to CLECs (Tier 1) and to the State of Florida (Tier 2) when AT&T's performance fails to meet the standard. The Order also recognizes our 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.

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FPSC-COMMISSION CLERK

Following the BellSouth and AT&T merger, AT&T began plans to migrate and consolidate the former BellSouth 9-state southeast OSS platform into a single pre-ordering and ordering operations support systems platform for use across AT&T's 22-state region. At the time of the merger, AT&T's Local Wholesale OSS operated uniformly in all of AT&T's 13-state region for many of the same CLEC customers doing business in the former BellSouth 9-state region. AT&T determined that the 13-state OSS system would produce greater efficiencies for the benefit of both AT&T and its customers throughout the 22-state region.

In 2007, AT&T started the process of providing official notification to CLECs of its OSS consolidation plans, known as the 22-state OSS Release. The 22-state OSS Release plan involves a phased-in approach over several years. The first phase commenced with the April 19, 2008 release (April Release).

Numerous CLEC-impacting issues arose in connection with the April Release. As a result, on May 12, 2008, Cbeyond Communications, LLC (Cbeyond), Time Warner Telecom, LP (TWTC), and DeltaCom, Inc. (Deltacom), jointly referred to as the petitioners, filed a petition with this Commission requesting a third-party independent audit of the April Release.¹ The petition also requested a stay of CLEC-impacting OSS Releases, that we issue a Show Cause Order, requiring AT&T to explain in detail the circumstances surrounding the April Release, and why AT&T should not be penalized for its failure to appropriately implement the April Release.

AT&T acknowledged that a variety of CLEC-impacting issues arose in connection with the April Release. On July 31, 2008, a conference call was held between our staff and the parties exploring the possibility that an audit be conducted by Commission staff. After further discussion, on August 5, 2008, the parties agreed to the audit being conducted by Commission staff and entered into a stipulation. Per Commission Order No. PSC-08-0618-PAA-TP, filed in Docket 000121A-TP, we approved the stipulation.

The stipulation further states that the petitioners would dismiss the request for an independent audit and hold the remaining portions of the petitioner's complaint in abeyance, pending a vote on our staff's recommendation addressing the final audit report. On September 12, 2008, the petitioners filed their agreement and Notice of Dismissal of their request for an independent audit with prejudice. The remaining portions of the complaint held in abeyance are the delay of future 22-state OSS releases and the request for a show cause proceeding.

The audit report was completed in January 2009, and it includes our staff's opinion as to whether appropriate and adequate measures have been undertaken to prevent CLEC-impacting issues with future scheduled 22-state OSS releases. In summary, the audit report contains 18 recommendations for improvement resulting from the review of AT&T's April 2008 OSS Release.

¹ On September 26, 2008, Time Warner Telecom filed in Docket 00012A-TP a Notice of Withdrawal from participation in the complaint.

The parties to the stipulation anticipated that the final audit report and Commission staff's recommendation would contain our staff's opinion as to whether appropriate and adequate measures have been undertaken to prevent CLEC-impacting issues with future scheduled 22-state OSS releases. The stipulation also required our staff's opinion as to what, if any, additional corrective action is necessary and, if so, what action is recommended.

On a December 5, 2008 conference call with the parties, our staff proposed that AT&T double the Florida SEEM remedies for a period of six months, beginning with implementation of the next 22-state OSS release currently scheduled for July 2009. Our staff further proposed that this increase in SEEM payments would be in lieu of the petitioners' request for this Commission to initiate a show cause proceeding to require AT&T to explain why it should not be penalized for its failure to appropriately implement the April Release. After three months of negotiations, the parties failed to accept our staff's proposal or to reach a compromise, therefore, on January 28, 2009 our staff sought written comments from the parties to explain their positions regarding the doubling of SEEM payments to be used as an incentive to ensure the adequacy of future 22-state releases.

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 we shall exercise its 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

Commission Staff's Audit Report

The Commission staff audit revealed AT&T's management's lack of understanding of the magnitude and complexity of the conversion effort from the beginning. The report states that failures were evident in AT&T's planning, organizing, directing, and control of this project. The audit report contains 18 recommendations for improvement that resulted from the review of AT&T's April 2008 OSS Release. The scope of the review includes AT&T's root cause analysis of the April Release failures, the defect management process, and AT&T's commitments made to this Commission. AT&T has taken steps to resolve many of the identified problems. However, there are still many unknowns.

AT&T has made a strong effort to remedy the problems identified during the April Release. AT&T has implemented numerous improvements and key resolutions, such as an expanded test plan and more effective vendor coordination. Our staff was able to validate the

resolution of several concerns with the April Release. Additionally, as AT&T indicated, there have been two post-April OSS releases implemented in August 2008 and November 2008. Both had fewer defects, but these releases were not 22-state impacting and the scope and complexity are not comparable and not indicative of the management performance required for a 22-state release, such as the April Release.

IV. Decision

Upon consideration of our staff's audit report and the parties' comments, we find it appropriate to allow AT&T to move forward with the next 22-state OSS release. However, to ensure the adequacy of the next 22-state OSS release, we hereby postpone our consideration of the petitioners' request for a show cause proceeding until after implementation of the next 22-state OSS release. After the implementation of the next 22-state OSS release, staff will recommend if the Commission should take any further action on this matter. This docket shall remain open for purposes of future performance measure monitoring.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AT&T shall be allowed to move forward with the next 22-state OSS release. It is further

ORDERED that to ensure the adequacy of the next 22-state OSS release, we hereby postpone our consideration of the petitioners' request for a show cause proceeding until after implementation of the next 22-state OSS release. 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 in the event this Order becomes final, this docket shall remain open for purposes of future performance measure monitoring.

By ORDER of the Florida Public Service Commission this 23rd day of March, 2009.



ANN COLE
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 April 13, 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.