

**Ruth Nettles**

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**From:** Woods, Vickie [vf1979@att.com]  
**Sent:** Monday, July 20, 2009 4:19 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 000121A-TP AT&T Florida's Notice of Supplemental Authority (NCUC Order)  
**Attachments:** 9100C\_Sc.pdf

- A. Vickie Woods  
Legal Secretary to E. Earl Edenfield, Jr., Tracy W. Hatch,  
and Manuel A. Gurdian  
BellSouth Telecommunications, Inc. d/b/a AT&T Florida  
150 South Monroe, Rm. 400  
Tallahassee, FL 32301-1558  
(305) 347-5560  
[vf1979@att.com](mailto:vf1979@att.com)
- B. Docket No. 000121A-TP: In Re: Investigation into the Establishment of Operations Support Systems Permanent Incumbent Local Exchange Telecommunications Companies.
- C. BellSouth Telecommunications, Inc.  
on behalf of Tracy W. Hatch
- D. 8 pages total in PDF format (Letter, Certificate of Service, Notice and Order)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Notice of Supplemental Authority (NCUC Order)

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7/20/2009

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Tracy W. Hatch  
General Attorney  
Legal Department

AT&T Florida  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301

T: (850) 577-5508  
[thatch@att.com](mailto:thatch@att.com)

July 20, 2009

Ann Cole, Commission Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 000121A-TP**  
**In Re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange Telecommunications companies (BellSouth Track)**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Notice of Supplemental Authority in the above referenced docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Tracy W. Hatch

Enclosures

cc: All parties of record  
Jerry D. Hendrix  
Gregory R. Follensbee  
E. Earl Edenfield, Jr.

**CERTIFICATE OF SERVICE**  
**Docket No. 000121A-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and U.S. Mail the 20th day of July, 2009 to the following:

Adam Teitzman  
Staff Counsel  
Lisa Harvey  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Tel. No. (850) 413-6175  
Fax. No. (850) 413-6250  
[ateitzma@psc.state.fl.us](mailto:ateitzma@psc.state.fl.us)  
[isharvey@psc.state.fl.us](mailto:isharvey@psc.state.fl.us)

Howard E. (Gene) Adams  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
Post Office Box 10095 (32302)  
215 South Monroe Street, 2nd Floor  
Tallahassee, FL 32301  
Tel. No. (850) 222-3533  
Fax. No. (850) 222-2126  
[gene@penningtonlawfirm.com](mailto:gene@penningtonlawfirm.com)  
Represents Time Warner

David Konuch  
Senior Counsel  
Regulatory Law & Technology  
Florida Cable Telecomm. Assoc.  
246 East 6th Avenue  
Tallahassee, FL 32303  
Tel. No. (850) 681-1990  
Fax. No. (850) 681-9676  
[dkonuch@fcta.com](mailto:dkonuch@fcta.com)

Douglas C. Nelson  
Sprint Nextel  
233 Peachtree Street, NE  
Suite 2200  
Atlanta, GA 30303  
Tel. No. 404 649-0003  
Fax No. 404 649-0009  
[douglas.c.nelson@sprint.com](mailto:douglas.c.nelson@sprint.com)

Vicki Gordon Kaufman  
Keefe Anchors Gordon & Moyle P.A.  
The Perkins House  
118 N. Gadsden St.  
Tallahassee, FL 32301  
Tel. No. (850) 681-3828  
Fax. No. (850) 681-8788  
[vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)  
Represents Cebyond  
Represents Deltacom

Dulaney O'Roark III (+)  
Vice Pres. & Gen. Counsel – SE Region  
Verizon  
5055 N Point Parkway  
Alpharetta, GA 30022  
Tel. No. (678) 259-1449  
Fax No. (678) 259-1589  
[De.OROark@verizon.com](mailto:De.OROark@verizon.com)

D. Anthony Mastando  
DeltaCom  
VP-Regulatory Affairs  
Senior Regulatory Counsel  
Ste 400  
7037 Old Madison Pike  
Huntsville, AL 35806  
Tel. No. (256) 382-3856  
Fax No. (256) 382-3936  
[tony.mastando@deltacom.com](mailto:tony.mastando@deltacom.com)

Beth Keating  
Akerman Law Firm  
106 East College Avenue  
Suite 1200  
Tallahassee, FL 32301  
[beth.keating@akerman.com](mailto:beth.keating@akerman.com)

Ms. Katherine K. Mudge  
Covad Communications Company  
7000 N. MoPac Expressway, Floor 2  
Austin, TX 78731  
Tel. No. (512) 514-6380  
Fax No. (512) 514-6520  
[kmudge@covad.com](mailto:kmudge@covad.com)

Cbeyond Communications, LLC  
Charles E. (Gene) Watkins  
320 Interstate North Parkway  
Suite 30  
Atlanta, GA 30339  
Tel. No. (678) 370-2174  
Fax No. (978) 424-2500  
[gene.watkins@cbeyond.net](mailto:gene.watkins@cbeyond.net)

Time Warner  
Carolyn Ridley  
555 Church Street, Ste. 2300  
Nashville, TN 37219  
Tel. No. (615) 376-6404  
Fax. No. (615) 376-6405  
[carolyn.ridley@twtelecom.com](mailto:carolyn.ridley@twtelecom.com)

Susan J Berlin  
NuVox  
2 N Main St  
Greenville, Sc 29601  
Tel No (864) 331 7323  
[sberlin@nuvox.com](mailto:sberlin@nuvox.com)

Matthew J. Feil  
Akerman Senterfitt  
106 East College Avenue  
Suite 1200  
Tallahassee, FL 32301  
Tel. No. (850) 224-9634  
[matt.feil@akerman.com](mailto:matt.feil@akerman.com)  
Represents CompSouth/Nuvox



Tracy W. Hatch

**(+) Signed Protective Agreement**

**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

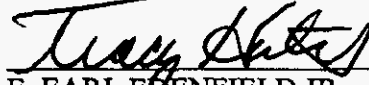
Filed: July 20, 2009

**NOTICE OF SUPPLEMENTAL AUTHORITY**

On June 11, 2009, BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T") filed a Petition for Waiver (the "Petition") in the instant docket seeking a waiver of certain penalties imposed on AT&T under its current SQM/SEEM Plan. AT&T filed a waiver in each of the states in its nine-state Southeast region. On July 14, 2009, the North Carolina Utilities Commission entered an order granting AT&T's petition for waiver.<sup>1</sup> A copy of the Order is attached as Exhibit A. AT&T hereby submits the North Carolina Order Granting AT&T's Petition as additional authority and support for its Petition in this proceeding.

Respectfully submitted, this 20th day of July 2009.

BellSouth Telecommunications, Inc. d/b/a AT&T Florida



\_\_\_\_\_  
E. EARL EDENFIELD JR.  
TRACY W. HATCH  
MANUEL A. GURDIAN  
c/o Gregory R. Follensbee  
150 South Monroe Street, Ste. 400  
Tallahassee, FL 32301  
(305) 347-5558

<sup>1</sup> See Order Granting AT&T's Petition for Waiver by the North Carolina Utilities Commission in Docket No. P-100, SUB 133k, issued July 14, 2009.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. P-100, SUB 133k

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Generic Docket to Address Performance ) ORDER GRANTING AT&T'S  
Measurements and Enforcement Mechanisms ) PETITION FOR WAIVER

BY THE COMMISSION: On June 9, 2009, BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina (AT&T) filed a Petition for waiver of the \$400 per day reposting penalties stemming from an error in coding in accordance with Section 2.6 of AT&T's Self-Effectuating Enforcement Mechanisms (SEEM) Plan<sup>1</sup>.

AT&T noted that, absent the relief it is seeking in its Petition, the reposting of the corrected data would result in AT&T paying a fine of approximately \$35,200 in North Carolina. AT&T asserted that, under the circumstances (which include no harm to competing local providers (CLPs) and self-reporting by AT&T), a fine of this magnitude is unduly punitive, excessive, and inconsistent with the purposes of the reposting obligation. AT&T further noted that all SEEM remedy obligations and SEEM liability calculations were correctly processed at all times, and all CLPs have received the appropriate payments under the SEEM Plan.

By Order dated June 11, 2009, the Commission requested interested parties to file comments on AT&T's Petition. In its Order, the Commission requested AT&T, in its reply comments, to provide additional clarification on why the reposting situation is different from other reposting situations in the past. The Commission noted that, specifically, AT&T paid significant reposting fees several times in 2008 according to the Service Quality Measurement (SQM)/SEEM Posting Report found on the PMAP website. The Commission stated that AT&T should clarify what made those paid reposting penalties different from the reposting penalties considered in AT&T's instant Petition. The Commission maintained that it appears from AT&T's Petition that the 2008 repostings may have required additional SEEM payments to CLPs while the current situation did not impact SEEM payments to CLPs in any way.

On June 22, 2009, the Public Staff filed its comments on AT&T's Petition. The Public Staff noted that the initial SEEM plan was adopted by the Commission in its

<sup>1</sup> Section 2.6 of AT&T's SEEM Plan states, "BellSouth shall pay penalties to the Commission, in the aggregate, for all reposted SQM and SEEM reports in the amount of \$400 per day. 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 or its designee within fifteen (15) calendar days of the final publication date of the report or the report revision date."

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May 22, 2002, *Order Concerning Performance Measurements and Enforcement Mechanisms*. The Public Staff stated that, in that *Order*, the Commission found that a penalty is an appropriate incentive to encourage AT&T to provide complete and accurate reports that allow the Commission and CLPs to monitor the level of service provided by AT&T. The Public Staff noted that the penalties adopted in that plan were \$1,000 per day for incorrect SQM, SEEM or raw data reports, up to \$3,000 per day, irrespective of their effect on other SEEM payments. The Public Staff maintained that on October 24, 2005, the Commission approved revised SEEM and SQM plans proposed by a coalition of CLPs and AT&T. The Public Staff stated that the revised SEEM plan, among other things, reduced AT&T's penalty obligations to \$400 per day for all reposted SQM and SEEM reports.

The Public Staff further noted that the policy under which AT&T is required to repost SQM data is set forth in Appendix D of the SQM plan and Appendix F of the SEEM plan. The Public Staff stated that the reposting policy sets the threshold at which AT&T must post corrected reports. The Public Staff asserted that this prevents AT&T from being required to repost data and incur penalties due to insignificant changes in the reporting results. The Public Staff maintained that, in this case, the posting error met the threshold described in the policy, thereby triggering the reposting requirement.

The Public Staff asserted that AT&T has failed to show that the penalty amount is unduly punitive or excessive or inconsistent with the purpose of the reposting obligation. The Public Staff noted that, indeed, AT&T paid similar penalties in 2008 for reposting SQM data as prescribed by the SEEM plan. The Public Staff maintained that the penalty payment due in this instance should give AT&T sufficient incentive to report accurate SQM data. Therefore, the Public Staff recommended that the Commission deny AT&T's request for a waiver.

On July 1, 2009, AT&T filed its reply comments. AT&T argued that the instant situation is a unique and first-time occurrence. AT&T maintained that the purpose of the reposting obligation is to encourage AT&T to correctly report data relied upon to calculate SEEM remedy payments. AT&T noted that, unlike previous reposting incidences of SQM performance reports that required recalculation of SEEM remedies to the CLPs and the Commission, the instant reposting had no such impact, because performance data for remedy calculations was properly processed and resulted in on-time and accurate remedy payments. AT&T asserted that, in other words, SEEM remedy obligations and SEEM liability calculations were reflective of actual operational performance; CLPs experienced no harm from this data reporting issue.

AT&T noted that, for purposes of the SQM performance reports for the P-11 Service Order Accuracy measurement, all Local Service Requests (LSRs) submitted by CLPs for which the P-11 metric applies were reviewed for accuracy to the completed service order after provisioning. AT&T stated that the metric report has two levels of disaggregation: Resale and UNE. AT&T maintained that the issue here is that some of the transactions (and only for some Local Number Portability (LNP) transactions) were reported in the Resale disaggregation when they should have been reported in the UNE

disaggregation. AT&T asserted that, had the Service Order Accuracy report been based on total performance instead of split between Resale and UNE, the results would not have changed. AT&T argued that, therefore, the CLPs had complete information to understand and assess their performance, and this error in SQM performance reporting did not by any means impair the CLPs' ability to compete.

AT&T stated that the requirement for the reposting was triggered by item 3 set forth in Appendix D of the SQM Plan<sup>2</sup> and Appendix F of the SEEM Plan<sup>3</sup>. AT&T noted that, specifically, for SQM sub-metrics calculations with benchmarks, reposting is required whenever there is a  $\geq 2\%$  decline in AT&T's performance at the sub-metric level. AT&T maintained that a recently-completed data analysis, which AT&T attached to its reply comments as Exhibit A, for the three performance data months subject to the reposting fine (December, January, and February), plus the additional data month of March, reflects that only a slight difference between the resale results for two months (December: 2.15%; January: 2.29%) triggered the reposting obligation. AT&T noted that for both the months of February and March, the difference was less than 2% and, therefore, no reposting was necessary. AT&T argued that this slight difference should not trigger a fine in a situation where remedies were accurately and timely processed.

AT&T maintained that the three performance data months subject to the reposting fine are December, January, and February. AT&T noted that the respective SEEM remedy payments for these data months were processed in February, March, and April. AT&T stated that it paid the Commission Tier 2 remedies totaling \$37,200 for those performance months for the Service Order Accuracy metric. AT&T argued that it is unduly punitive to now require a reposting fine of \$35,200, which almost equals the Tier 2 remedies paid that were processed in a timely manner using correct performance data.

AT&T asserted that it has acted in good faith by identifying and self-reporting this error in the SQM performance reports for Service Order Accuracy and promptly initiating corrective action, including notification to the industry as required by Appendix F (PMAP Data Notification Process) of the SQM Plan. AT&T maintained that, under these circumstances, the payment of the \$400 per day reposting fine serves as a disincentive for AT&T to be proactive in the spirit of continuous improvement to identify any potential data processing errors.

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<sup>2</sup> Item 3 in Appendix D of AT&T's 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  $\geq 2\%$  decline in BellSouth's performance at the sub-metric level."

<sup>3</sup> Item 3 in Appendix F of AT&T's SEEM 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  $\geq 2\%$  decline in BellSouth's performance at the sub-metric level."



AT&T stated that, for all of the reasons set forth in its Petition and reply comments, the Commission should grant its waiver request.

WHEREUPON, the Commission now reaches the following

### CONCLUSIONS

The Commission concludes and determines that the SQM and SEEM plans in place for AT&T are reasonable and appropriate. Those plans call for AT&T to pay a reposting penalty to the Commission of \$35,200 for data errors made in December 2008 and January 2009. Reposting is required whenever there is a  $\geq 2\%$  decline in AT&T's performance at the sub-metric level. Based on Exhibit A attached to AT&T's reply comments, the difference between the original metric result and the reposted metric result for P-11 Service Order Accuracy – Resale for December 2008 was -2.15% or 0.15% higher than the 2% threshold, and the difference between the original metric result and the reposted metric result for P-11 Service Order Accuracy – Resale for January 2009 was -2.29% or 0.29% higher than the 2% threshold.

The Commission concludes and determines that, in this unique and specific circumstance, it is appropriate to grant AT&T's request for a waiver of the reposting penalty. Because the percentages which triggered the reposting and reposting penalty are so close to the 2% threshold and because all SEEM penalty payments were calculated correctly and paid on-time, the Commission is satisfied that this specific instant case is deserving of a waiver. The Commission stresses that this is a decision based on the facts of AT&T's instant request and that the Commission is granting a waiver to a reposting penalty that is technically and legitimately due under AT&T's SEEM plan. The Commission does not intend for this decision to be precedent-setting and will consider any future waiver petitions of this nature on a case-by-case basis.

IT IS, THEREFORE, ORDERED that AT&T's June 9, 2009 Petition for Waiver is hereby granted.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of July, 2009.

NORTH CAROLINA UTILITIES COMMISSION



Patricia Swenson, Deputy Clerk