Marguerite McLean

000121A-TP

From: nicki.garcia@akerman.com

Sent: Thursday, September 03, 2009 4:39 PM

To: Filings@psc.state.fl.us

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Subject: Electronic Filing - Docket No. 000121A

Attachments: 20090903163602698.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact either Matt Feil or Nicki Garcia at the numbers below. Thank you.

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Docket No. and Name: Docket No. 000121A - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies (AT&T Florida Track).

Filed on behalf of: CompSouth

Total Number of Pages: 53

Description of Documents: Comments of the Competitive Carriers of the South, Inc. on AT&T's July 10, 2009 Proposals.

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9/3/2009

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September 3, 2009

VIA ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket 000121A -- Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (AT&T FLORIDA TRACK)

Dear Ms. Cole:

Enclosed for filing are the Comments of the Competitive Carriers of the South, Inc. on AT&T's July 10, 2009 Proposals.

Your assistance in this matter is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Matthew Feil

Enclosures

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 Filed: September 3, 2009

Comments of the Competitive Carriers of the South, Inc. on AT&T's July 10, 2009 Proposals

Pursuant to the August 18, 2009, Amended Notice issued by the staff of the Commission, the Competitive Carriers of the South, Inc., ("CompSouth")[1] hereby files its comments to AT&T's proposed changes to the service quality measure ("SQM") plan, filed July 10, 2009.

I. INTRODUCTION.

At the time BellSouth (now AT&T) sought section 271 approval under the 1996 Telecommunications Act (the "Act") and ever since, the Florida Commission has served a leadership role in the development and review of SQM and SEEMs plans in the Southeast. The Florida Commission has been uniquely positioned for this role, with knowledgeable and dedicated staff possessing many years of experience with SQMs and SEEMs. Florida, the most populous state in the Southeast, has more residential and business customers than any other state in the region; and the interests of those customers have been well served by the attention the FPSC has given to the quality of the underlying services that make competitive choices possible for those consumers. The Commission's resources have served the state commendably. No other state in the region monitors the competitive marketplace like Florida. Notably, almost all

[1] CompSouth is made up of the following CLEC members: Access Point, Inc.; Birch Communications; Cavalier; CBeyond; Covad; DeltaCom; FPL Fibernet; Level 3 Communications; NuVox; Sprint; tw telecom; and XO Communications.

states in the Southeast now operate under SQM and SEEMs plans that are copied from or modeled after the Florida plans. Because of this Commission's leadership role and because of the broad scope of AT&T's proposed changes to the SQM and SEEMs plans, it is vital that the Commission carefully scrutinize AT&T's proposals and deny any which impede the effectiveness the current plans.

CompSouth asserts the Commission must reject the significant changes AT&T proposes to the Florida plans because those proposals, if implemented, will run afoul of the statutorily required and historically affirmed purpose and intent of the plans and will not accurately measure discriminatory treatment. The Commission's responsibility to ensure fair and effective competition cannot be carried out unless the Commission continues all or most of the current plans and retains oversight over all aspects of those plans. This is no time to needlessly endanger competitive choice for Floridians, particularly give current economic conditions.

Accordingly, CompSouth opposes the most significant proposals in AT&T's July 10 filing. These include AT&T's proposals to:

- Move to "commercial" SEEMs agreements which would be outside of the Commission's review, approval and enforcement authority.
- Eliminate Tier II penalties altogether.
- Remove certain metrics, including the collocation, billing and change management metrics, and remove disaggregation levels.

CompSouth notes that staff's Notice requested comments on the parties' July 10 filings and July 29 presentations. AT&T's July 10 filing and subsequent presentation did not propose specific changes to the SEEMs calculations. AT&T made such proposals by a subsequent redline filing on August 7. CompSouth reserves its right to comment further on AT&T's redline of the SEEMs

plan at a later date, but notes in the meantime that CompSouth opposes AT&T's proposal to change: caps and cap structure for SEEMs payments, Epsilon, balancing critical value, multipliers and small sample table. CompSouth's positions on AT&T's July 10 filing are further explained below. [2]

In its current review of the plans, the Commission cannot lose sight of the history and purpose of the SQMs and SEEMs plans. The plans were implemented to create a simplified process for monitoring and enforcing the nondiscrimination provisions of the Act. As discussed in Section VII below, this included the means for a post-271- non-litigation mechanism for tracking and incenting nondiscriminatory service. Nondiscriminatory access to network elements, including OSS, is required by Section 251 and 271 of the Act and the FCC's implementing rules. SQM plans were developed to measure and monitor that access as well as ensure continuous nondiscriminatory access. SQMs were not intended as a one-time test for opening markets under Section 271, nor are SQMs an anachronistic regulatory tool of a prior era. The FCC relied heavily on the existence of robust SQM and SEEMs plans under the scrutiny of the state commissions when the FCC evaluated RBOC 271 applications, including BellSouth's Florida application. Nothing about the Act has been changed in this regard.

Further, SQM and SEEM plans were to provide a non-litigation compliance incentive. This was very important when they were created and is even more important now. When

[2] While CompSouth attempted to address all of AT&T's July 10 proposed changes, some points may have been overlooked. CompSouth reserves its right to provide or clarify positions during collaboratives, workshops and in subsequent materials, including but not limited to position matrices. This is necessary because the review and collaborative processes are fluid and complex. CompSouth does not address herein certain proposed changes to which CompSouth, CLECs and AT&T have already agreed. For instance, CompSouth agreed to changing out "BellSouth" for "AT&T" throughout the plan. AT&T withdrew its requested change of "direct comparison with retail" for "parity" in all metrics where that change was proposed. CompSouth and other CLECs on the collaborative call August 28 also agreed to delete metrics P-7B and P-7C. In the event that there is any change to these agreements, CompSouth reserves the right to change its position and provide the bases for any disputed language.

BellSouth was granted interLATA relief under Section 271 of the Act, it had two very large, well financed legal adversaries in AT&T Long Distance ("AT&T LD") and MCI Communications ("MCI"). At that time, the threat to BellSouth of costly litigation concerning discriminatory treatment under Sections 251 and 252 of the Act was much larger than it is now, since AT&T LD is no more and MCI has been acquired by Verizon. Today, market participants are less able to finance litigation that can bring AT&T discriminatory actions to light. And AT&T market abuses are more likely to harm the public interest because such discrimination can go unnoticed by regulators if not monitored. Therefore, performance measures and SEEMs plans are more valuable towards protecting the public interest today than they were when they were established during the 271 approval process. More regarding the legal basis and intent for the SQM and SEEMs plans is in Section VII below.

II. THE COMMISSION SHOULD POSTPONE SQM/SEEMS REVISION UNTIL OSS RELEASES ARE COMPLETE.

AT&T is making several 22-state software modifications/releases to be completed by the second quarter of 2010.[3] For at least three reasons, CompSouth maintains the Commission's review of the AT&T SQM and SEEMs plans should be postponed until after those releases are completed. First, considering the debacle that resulted from AT&T's major 22-state release in April 2008, the Commission should not in any way lesson AT&T's responsibility and incentive to perform **before** 22 State consolidation completes. Second, the releases may prompt more changes to the SQM plan. The most efficient way to address plan review therefore is to address the plans once, after the releases, not twice, before and after. Third, the FCC is in the process of

[3] AT&T performed one such software release in July of this year. CompSouth members have not yet attempted to utilize the ordering functionality associated with that software change.

changing customer porting requirements with significant involvement from the industry. The plans will have to be adjusted to account for the new porting requirements; so, again, it is simply more efficient for revisions to be made all at once, rather than piecemeal.

AT&T's April 2008 22-state release caused over 71,000 CLEC orders to be lost, cancelled or significantly delayed. Corrective action and normal processing took AT&T over 12 months. Substantial CLEC resources had to be devoted to curing the fall-out of AT&T's blunder. In its audit of the April 2008 release and the aftermath, the Commission staff found that the release was a "critical failure." AT&T, significantly, did not dispute that conclusion. When the Commission considered what action to take against AT&T for this "critical failure," the Commission elected to "postpone . . . a show cause proceeding until after implementation of the next 22-state OSS release." [4] And yet the parties are being asked now, before the next 22-state release, to discuss AT&T's proposal **to lessen** AT&T's responsibilities to provide nondiscriminatory access as measured by the SQM/SEEMs plans. Simply put, AT&T wants to change the rules in the middle of the game. If AT&T breaks the rules again, and its next 22-state releases are critical failures, the consequences to AT&T under the plans would be less than before. This is not true to the Commission's show cause decision. This does not incent AT&T to perform. For these reasons, CompSouth maintains that it is inappropriate to implement any of the changes AT&T requests before April, 2010 when AT&T completes its OSS modifications to support 22-state OSS architecture.

AT&T's forthcoming 22-state releases will likely require further adjustment to the SQM plans. The process of reviewing, writing, and evaluating plan changes is administratively

[4] Order No. PSC-09-0165-PAA-TP, issued March 23, 2009, at page 4.

burdensome for all parties and the Commission. Further, the FCC's porting requirements are under intensive review, and much more about those anticipated changes should be known by the second quarter of 2010. Therefore, CompSouth asserts that rather than have the parties and the Commission go through iterative changes to the plan over the next nine plus months and expend significant resources in so doing, the review process should be postponed until after AT&T completes its scheduled 22-state releases.

It should be noted that on August 17, 2009, (Accessible Letter CLECSE09-134) AT&T sponsored the first conference call in a collaborative designed to address SQM and SEEMs issues and to discuss possible plan changes. CompSouth commends AT&T for this effort and believes that such open dialogue among the parties will be invaluable. If the Commission chooses to delay the plan reviews, as CompSouth suggests, CompSouth intends to participate in the collaborative regardless, for so long as the parties are making progress and the dialogue continues to be productive.

III. ATT HAS NOT PERFORMED.

The Commission should require AT&T to perform and should raise AT&T's performance obligations as CompSouth suggested in its July 10 filing, not lower the performance standards or SEEMs. It makes no sense to lower performance standards when AT&T has not performed. In fact, for several metrics, AT&T is in a perennial state of noncompliance. For example, AT&T routinely misses the standard for the following metrics: O-9 (FOC Timeliness - Partial Mech Orders), P-11 (Service Order Accuracy – Partial Mech) and P-4 (Order Completion Interval – Partial Mech). Further, for 2009, the metrics for which AT&T has incurred the most Tier II liability have been the same every single month: M&R-3 (Maintenance Average Duration –

UNE Loops Non-design) and P-11 (Service Order Accuracy – Resale). Other metrics are frequently if not periodically missed.

The answer to AT&T's performance problems is for AT&T to perform, not over-haul the plans. Not one of ATT's proposed changes to the plans will actually improve ATT's performance. All of ATT's changes either lessen current requirements, mask performance, reduce AT&T's remedy exposure, or all of the above. CompSouth's proposals, in contrast, are crafted to incent ATT to perform (with an emphasis on areas of critical concern), to provide non-discriminatory treatment, and, ultimately, improve marketplace conditions for the betterment of Florida's consumers.

IV. SQM PLAN AND METRIC CHANGES.

CompSouth members have diverse business models so ranking metrics by consensus can be difficult. All of the current metrics are important. Both CompSouth and AT&T have identified changes that should be addressed, either through the collaborative process or through Commission intervention. CompSouth intends to address each AT&T proposal to determine if agreements can be reached. However, to preserve CompSouth's position with respect to these metrics, in this section, CompSouth addresses each of AT&T's proposals that are now in controversy, as well as discuss at a high level certain of the CompSouth proposed changes. The metrics below are listed in the order in which they appear in the plan, not in the order of importance to CompSouth.

As a general matter, CompSouth would first urge the Commission to consider that AT&T's reason for wanting to make changes such as eliminating metrics, disaggregation levels and an entire tier of SEEMs appears to be to simplify its operations, allow it to save money and

permit itself additional slack in wholesale performance. While simplifying operations and saving money are typically laudable business goals, in this instance the consequences -- significantly inferior wholesale performance for competitive carriers and their customers - outweigh those goals. The whole point of establishing a self-effectuating, enforcement mechanism was to simplify the monitoring and enforcement of the nondiscrimination provisions of the Act. Eliminating measures and penalties in the plans may make AT&T's job easier but it will not facilitate this Commission's monitoring and enforcement of the nondiscrimination provisions of the Act. Watering down the plan will simply allow AT&T to be freer to discriminate in favor of its retail operations without being detected. AT&T apparently wishes this Commission to decide that a smaller and less robust performance measurement plan that permits its discrimination to go unreported is desirable. On behalf of our member companies and our many customers in Florida, we urge the Commission to reject that view. What is a worthwhile is maintaining SQM and SEEMs plans with potential financial penalties large enough to incent AT&T to allocate money to fix wholesale service problems and eliminate the discrimination. AT&T's request is not to simplify the plans, but to make it more difficult for regulators to ensure AT&T's compliance with the law and to discourage market entry. This is not in the public interest and must be rejected.

Note on AT&T proposed change to URL identifiers and references to PMAP:

Throughout its redline to the SQM plan, AT&T deletes any and all references to PMAP and specific URLs. CompSouth opposes AT&T's proposal to delete these references. The plan documents, results and related materials should all be instructive and clear on their face. From CompSouth's perspective, the listing of a specific interface and URL are necessary. Without

exact information, CLECs will be required to hunt for PMAP information in a myriad of links and places within the AT&T website. Therefore, a straight-forward identification of programs, interfaces and URLs in the plan is simply more efficient. For convenience, CompSouth does not repeat its position to this AT&T proposed change in the discussion of plan changes below.

Note on AT&T proposed change to SEEMs:

AT&T deletes any and all references to SEEMs, Tier I and Tier II throughout its July 10 redline. It is not entirely clear to CompSouth from AT&T's July 10 filing which, if any, of these deletions could be independent and unrelated to AT&T's global requests to move Tier I SEEMs to commercial agreements and eliminate Tier II altogether. In recent discussions with AT&T, CompSouth believes AT&T may have independent reason for eliminating SEEMs for specific metrics. However, AT&T has also stated that it would not discuss specific SEEMs changes until agreement was reached on SQM plan changes.

To be clear, CompSouth opposes all AT&T's SEEMs-related changes. CompSouth addresses AT&T's commercial agreement proposal in Section V below and AT&T's proposal to eliminate Tier II SEEMs in Section VI. CompSouth may state opposition to an AT&T proposed change on SEEMs in the discussion of metrics in this Section due to the perception that AT&T may assert independent argument for a SEEMs change in a given metric. CompSouth reserves its right to provide additional bases for opposing any AT&T SEEMs changes as AT&T's proposals become clearer.

A. Plan Introduction, Report Publication Date, Report Delivery Methods, Change of Law, and Administrative Changes.

AT&T proposes several changes in these initial SQMs sections that should be addressed. CompSouth does not object to AT&T's proposal to modify its name in the successor SQMs version. However, with respect to the remaining changes that AT&T proposes in each of these sections, CompSouth opposes them primarily because they result in significant changes either to the administration or use of the SQM reported data. AT&T has not provided any rationale or justification for these changes in its filing. For example, CompSouth opposes any provision that would allow AT&T to revise "administrative" changes to the SQMs without prior CLEC collaboration and, preferably, agreement. What may be "non-substantive" or "administrative" to AT&T should not be the operative factor. Instead, the key to these type of changes should be whether AT&T, the CLECs (who are basically affected by any modification), and the Commission agree. Another example deals with AT&T's proposed new "Change of Law" provision, which would allow AT&T to seek implementation of a Commission Order and/or change of law on all CLECs within a short time frame (30 days) and without any discussion, proposals, or attempt for collaboration with the CLECs. Unlike with typical bilaterally negotiated change of law provisions, AT&T's process does not anticipate negotiation and discussions with CLECs before implementation is sought. For each of AT&T's proposals in these introductory sections, CompSouth reserves the right to propose specific revisions to AT&T's proposals after CompSouth has had an opportunity to flesh out justification and further details from AT&T.

B. OSS Metrics.

OSS-1 [ARI]: OSS Response Interval (Pre-Ordering/Ordering/Maintenance & Repair

CompSouth opposes one of AT&T's proposed changes to this metric.[5] Specifically, AT&T seeks to remove reference to the OSS interfaces and databases to which this metric applies. CompSouth opposes deletion as it will cause confusion and ambiguity in the application of the metrics. Instead, CompSouth proposes to update the list of OSS interfaces/databases to which the measurement applies to reflect those that are currently used by CLECs. This will promote clarity in what is being tracked and reported. In addition, CompSouth proposes to revise the disaggregation to pre-ordering, ordering, and maintenance, rather than reporting the data in the aggregate for pre-ordering and ordering. As AT&T moves towards 22-State processes and interfaces, it will be even more necessary to have the data reported for each component, rather than the aggregate, to enable AT&T and the CLECs to identify specific problems and lack of performance on each component. Finally, given the most recent experiences with AT&T's OSS releases, CompSouth proposes to make this metric subject to remedies. AT&T's response to CLEC pre-orders, orders or maintenance issues is customer and business affecting; therefore, it should be remedied.

OSS-2 [IA]: OSS Interface Availability (Pre-Ordering/Ordering/Maintenance & Repair) – CompSouth does not object to AT&T's proposed modification to modify the "x" in the Calculation section, or throughout the performance plan. CompSouth opposes AT&T's proposed elimination of Tier II remedies as further discussed in Section VI. CompSouth proposed to make this metric subject to Tier I remedies for the same reasons addressed in OSS-1.

PO-2 [LMT]: Loop Makeup – Response Time – Electronic – CompSouth opposes AT&T's proposal to change this metric. Many CompSouth members use the loop makeup

[5] AT&T's proposed change from "parity" to "direct comparison" first appears here. As noted earlier, AT&T has withdrawn this change. Accordingly, CompSouth does not address this now-withdrawn change in any of the other places where it appears in AT&T's July 10 redline.

information as part of their pre-qualification process to determine if they can provide service to a customer. Therefore, the response time for the inquiries remains important to enable a CLEC to provide timely customer service. CompSouth did not propose any changes to this metric.

C. Ordering Metrics.

O-2 [AKC]: Acknowledgement Message Completeness – CompSouth opposes deletion of this metric because the metric tracks a process relied upon by the CLECs in the provision of service. CompSouth proposes to delete the Exclusion related to Manually Submitted LSRs. CompSouth addresses this proposal below.

O-3[FT] Percent Flow-Through Service Requests-

CompSouth as discussed above believes the removal of the URL only suffices to add confusion to a process which is fluid and changing. In the Southeast, AT&T is required to post a Flow Through matrix of services and delineate which products and order types are considered flow through; this tool currently resides on the PMAP site. This table is used by developers and agents in determining how requests are processed. AT&T has eliminated the manual request, no longer are the CLECs allowed to send requests by FAX or paper. AT&T requires an e-mail of the template forms under specific formatting rules. Once the e-mail is created the CLEC receives rejects, clarifications and acknowledgements via e-mail. AT&T no longer manually keys the LSR Form data into its systems, thus these request are now partial mech rather than manual. CompSouth has deleted manual from the metrics. CompSouth feels due to the maturity of the plan that this is an appropriate time to move the benchmarks higher. CompSouth opposes AT&T's lowering the benchmark to overall 90% and seeks to retain the disaggregation.

O-8 [RI]: Reject Interval-

CompSouth seeks to include LSR's associated with Merger and Acquisition in the calculation, remove non-mechanized references as discussed earlier, move the benchmark for Local Interconnection trunks from 4 to 2 business days, and asks AT&T why ASR's are not included in the rules. Receiving timely status for a customer's request is critical element to CLEC's service delivery to their end users, thus providing the Florida consumer with the best possible service in a timely and efficient manner.

O-9 [FOCT]: Firm Order Confirmation Timeliness – CompSouth proposes changes to this metric to eliminate of the Non-Mechanized disaggregation and benchmark for the reasons stated above in Section IV. CompSouth also raised an issue and potential dispute in that the Definition of this metric includes LSRs and ASRs, but the Business Rules appear to include only LSRs for LNP for mechanical categories and Bulk Migrations. CompSouth questions whether ASRs should also be included in the Business Rules for Fully Mechanized activities. With respect to AT&T's proposed changes, CompSouth opposes AT&T's proposal to delete the Business Rule for Bulk Migration and the elimination of specific levels of disaggregation for each of the UNE products. Since CLECs use different products depending on their business plans, each product should be disaggregated for reporting purposes to ascertain AT&T performance for that product. CompSouth also opposes AT&T's proposal to eliminate Tier I and Tier II remedies. The latter issue is discussed in Section VI. With respect to elimination of Tier I remedies, CompSouth opposes because the activity (FOC timeliness) is customer/service affecting and should be subjected to remedies in the event that AT&T does not comply with the benchmarks.

O-11 [FOCC]: Firm Order Confirmation and Reject Response-

CompSouth opposes AT&T's request to delete this metric. AT&T's OSS experienced failures during the April 2008 release. One CLEC in Florida saw a 14 consecutive month failure for the partial mechanized responses. Again, the plan must be strengthened to incent AT&T to correct failures in a timely manner. (CompSouth addresses this in its SEEM proposal to add an additional fee for metrics missed more than 6 months consecutively.) The FOC is a key element to the CLEC's establishing customer expectations regarding an appointment time. CompSouth also notes that M&A orders should not be excluded from the metric, and non-mechanized order references are no longer appropriate in the plan, given the e-mail process currently used. AT&T's desire to "simplify" is really just an attempt to avoid further payments rather than fix its flawed systems or headcount issues.

O-12 [OAAT]: Average Answer Time – Ordering Centers: AT&T and CompSouth have taken different approaches to modify this metric. Both sides apparently agree that the metric has some value – the question is what the metric should report and whether it should be remedied. CompSouth proposes to keep the metric as is, except for two changes: (a) to add calls into the Consumer Service Center ("CSC") into the data and calculation for average answer time, and (b) to make this metric subject to Tier 1 remedies. CompSouth proposes to add the CSC to this metric because CLECs call the CSC, in addition to the Business Service Center, for troubleshooting of provisioning and maintenance problems. The answer time associated with calls to both the CSC and Business Service Center is important to enable CLECs to timely respond to problems with their end users' service. CompSouth members are experiencing delayed response times through the AT&T Service Centers and we have no reason to believe that the response times will improve in the future, given AT&T's ability to close call centers and to

relocate resources elsewhere. Therefore, in addition, CompSouth proposes to make this metric subject to Tier I remedies. With respect to AT&T's proposed changes, CompSouth opposes AT&T's modification to the benchmark because it is unclear whether or how the proposed change will affect actual time responses or provide the proper incentive for AT&T to provide parity service.

D. Provisioning Metrics.

P-1[HOI]: Held Order Interval – CompSouth does not oppose AT&T's proposed revisions to the levels of disaggregations for this diagnostic metric. However, to make this metric more meaningful to track relevant wholesale performance, CompSouth has proposed that a new level of disaggregation be reported to identify the number of orders held due to lack of copper facilities available. CLECs rely upon the use of copper facilities and loops for the provision of service to their customers. The number of copper retirements and "copper facilities not available" appear to be on an alarming increase. Therefore, reporting this information will be beneficial.

P-2A: [PJ48]: Percentage of Orders Given Jeopardy Notices >= 48 hours – CompSouth opposes AT&T's proposal to remove Tier I or Tier II remedies for reasons already stated. Notwithstanding AT&T's performance over the past twelve months, there is no reason to make this metric diagnostic. CompSouth proposes to eliminate the current Exclusion dealing with orders jeopardized on the due date. AT&T was ordered to perform a facility check before issuance of the FOC; however, certain CompSouth members have experienced situations in which AT&T has apparently not performed the facility check because the pair turns out bad.

The CLEC, and ultimately its customer, is directly affected by AT&T's failure because the order is either jepped or the CLEC has to issue a trouble report – both of which delay the customer's service. Therefore, not only should the exclusion be deleted, but CompSouth proposes to make this metric subject to Tier I remedies because the jeopardies on the due date directly affect the CLECs' ability to provide timely service to the customer.

P-2B [PJ]: Percentage of Orders Given Jeopardy Notices: CompSouth opposes AT&T's proposal to eliminate Tier I remedies for this metric for the reasons stated with respect to P-2A above. CompSouth proposes to delete the Exclusion related to orders issued with a due date of less than or equal to 48 hours because these orders directly impact the CLECs' ability to timely provide service to the end user.

P-3 [MIA]: Percent Missed Installation Appointments – CompSouth opposes AT&T's proposal to eliminate Tier I remedies for this metric for the reasons stated with respect to P-2A above. CompSouth proposes to delete the Exclusion related to Zero Due Date Orders because even though these orders involve calls and coordination between the CLEC and AT&T, if AT&T misses the appointment, the CLEC's ability to provide service to its end user is directly affected. When AT&T does not perform on install appointments for Zero Due Date Orders, AT&T's performance (missed or met appointments) should be included in the reporting for this metric.

P-4 [OCI]: Order Completion Interval (OCI): AT&T proposes to delete the URL of the AT&T performance plan. CompSouth disagrees because while AT&T may seek flexibility in where it posts the PAP and reports, CLECs need certainty and clarity for that information. Therefore, CompSouth proposes to have AT&T update the URL, rather than delete it from this metric (or throughout the PMAP). CompSouth opposes AT&T's proposal to eliminate Tier I and

Tier II remedies for this metric. Order completion and the time taken to complete the order are key components of AT&T's activities that enable the CLEC to provide timely service to its customers. CompSouth does not propose any changes to this important metric at this time.

P-5 [CNI]: Average Completion Notice Interval: For the reasons stated above in P-4, CompSouth opposes elimination of Tier I or Tier II remedies from this metric. AT&T's timely notification of completion of the notice directly affects the CLEC's ability to timely provide service to its end user. CompSouth proposes to delete references to non-mechanized orders in this metric for the reasons stated above.

P-7 [CCI]: Coordinated Customer Conversions – Hot Cut Duration: CompSouth does not propose any changes to this metric. CompSouth opposes elimination of Tier I or Tier II remedies to this metric for the reasons previously stated.

P-7A [CCT]: Coordinated Customer Conversions – Hot Cut Timeliness Percent within Interval: CompSouth did not propose any changes to this metric. CompSouth opposes elimination of Tier I or Tier II remedies to this metric, as AT&T proposed, for the reasons previously stated.

P-9 [PPT]: Percent Provisioning Troubles within "X" Days of Service Order Completion – CompSouth opposes AT&T's proposals to: (a) eliminate reference to "Parity" in the Benchmarks, and (b) eliminate Tier I and Tier II remedies. Provisioning and the importance of minimizing troubles close to the service order date are basic and vital activities that AT&T must perform well and should be held to a very high standard. CompSouth, as a general principal, opposes elimination of any language which appears to remove parity comparisons to levels of service provided by AT&T to its retail customers. Parity, as that term is defined, should

remain within the PAP for appropriate benchmarks. CompSouth opposes elimination of Tier I and II remedies for the reasons previously stated. CompSouth did not propose any changes to this metric.

P-11 [SOA]: Service Order Accuracy – CompSouth opposes AT&T's proposed changes to: (a) modify the Calculation; (b) eliminate separate disaggregation for Resale and UNEs; and (c) eliminate Tier I and Tier II remedies. CompSouth submits that AT&T's changes to the Calculation could change the results of AT&T's performance on this metric without justification. Accuracy of AT&T's completion of the order again directly affects the CLEC's ability to provide timely and promised service to its end users; therefore, any change that could allow AT&T's performance to be lowered is objectionable. CompSouth opposes AT&T's proposal to report a single level of disaggregation because CLECs have different needs and/or business plans which rely on either Resale or UNE, but not necessarily both. Therefore, the disaggregation should remain separated. CompSouth proposed to add an exception to the Exclusion dealing with Projects involving CLEC merger and acquisition ("M&A") activity. Certain CompSouth members have experienced a lack of performance and timely completion on projects involving situations when the CLEC is involved in an M&A scenario that requires Bulk Migrations or handling. It appears that without sufficient financial incentive for AT&T to timely meet its time frames agreed to for these types of projects, it is necessary not to include these projects in the Exclusion. Further most M&A activities are time sensitive, and, therefore, AT&T should be incented to meet the agreed upon dates for completion. CompSouth opposes any proposal to eliminate Tier I or Tier II remedies for the reasons previously stated. CompSouth raised a

clarification question that needs to be addressed as to whether the list of USOCs should be updated because it appears to be incomplete.

P-13B [LOOS]: LNP-Percent Out of Service < 60 Minutes – CompSouth opposes AT&T's proposal to eliminate Tier I or Tier II remedies for this metric. AT&T has not justified making this metric diagnostic since orders involving LNP are critical to many CLECs' business plans and ability to provide service to end users. CompSouth proposes to add a placeholder reference to allow revisions to this metric based on the likelihood of significant changes being made to LNP intervals in the near term as well as changes to the definitions of simple and complex ports, These changes may affect the reporting and benchmarks applicable to this metric. With the ongoing discussions at the industry level, CompSouth does not want to be precluded from further discussions or proposed revisions that might be required.

P-13C [LAT]: LNP-Percentage of Time BellSouth Applies the 10-Digit Trigger Prior to the LNP Order Due Date – CompSouth proposes to increase the benchmark for AT&T's performance from 95% to 96.5% to incent AT&T to ensure that this product is provided at a high level of quality, particularly given the mechanized aspect of this process. While AT&T reports that it continues to meet this metric, this metric measures times in which AT&T forces CLECs to use a 10-digit trigger which could delay the provision of the service to the end user. CompSouth opposes AT&T's proposal to delete this metric because many CLECs utilize LNP in their loop orders and, therefore, activities to minimize potential areas of disruption or delay in providing service that ultimately affect the end user, should be avoided.

P-13D [LDT]: Disconnect Timeliness (Non-Trigger) – CompSouth opposes AT&T's proposal to eliminate Tier I and Tier II remedies for the reasons previously stated. CompSouth

proposes to increase the benchmark from 95% to 98% to more accurately reflect the level of performance that AT&T should provide in order to enable CLECs to provide timely service to its end users.

CompSouth Proposed New SQMs Regarding Average Time Required to Update 911 Database (Facility Based Providers); Percent Database Accuracy; 911- Average Time to Clear Errors; Percentage of Updates Completed into the DA Database within 72 Hours for Facility-Based CLECs; Directory Assistance-Database Update Accuracy; Percentage of Electronic Updates that Flow-Through the DSR process without Manual Intervention – CompSouth proposes to add these metrics dealing with activities involving 911 and Directory Assistance databases that AT&T handles with and for CLECs. CompSouth members are experiencing AT&T delay and/or inaccuracies in updating these databases; yet these databases remain important to timely provide emergency and information service. Because of the concerns that CompSouth members have as to whether AT&T is using sufficient resources to update these critical databases timely and accurately, CompSouth proposes to include these metrics and remedies which are implemented in other AT&T Regions.

E. Maintenance and Repair.

M&R-1[MRA]: Percent Missed Repair Appointments – CompSouth did not propose any changes to this metric. CompSouth opposes AT&T's elimination of Tier I and Tier II remedies for the reasons previously stated. Remedies are particularly important with respect to this activity because AT&T's missed repair appointments directly affect a CLEC's ability to timely handle troubles for its end users. CompSouth is still evaluating the AT&T proposed revision to the Report Structure to exclude trunks and reserves the right to dispute the proposal.

to cure the year-long issue. This measure is of critical importance to the CLECs and their ability to provide comparable service to their customers.

- In 8 of the 11 products that had a Dispatch type of "Dispatch," the CLECs experienced a higher Trouble Report Rate than AT&T retail. Approximately 29% (80 of the 276 total) of the months in this report that could be measured, resulted in the CLECs being given a higher % Trouble Report Rate than AT&T.

CompSouth believes that the appropriate cure for these issues is for AT&T to perform and to increase SEEMs, not to change measures to mask performance or remove SEEMs from Commission oversight.

M&R -3 [MAD]: Maintenance Average Duration.

CompSouth does not oppose AT&T's changes to the Report Structure or SQM Level of Disaggregation sections but does oppose any changes to SEEMs. To illustrate the CLECs' experience with this metric and why CompSouth believe this measure and SEEMs are necessary, consider that in the last 12 months of MAD-Maintenance Average Duration there is evidence of an alarming trend. The following data was pulled in PMAP from July 2008 thru June 2009. Seventeen out of 23 products had a Maintenance Average Duration for CLECs that failed to meet parity during at least one month in the year. (Four products could not be measured as AT&T did not have any tickets that month to compare its performance with that given to the CLECs.) AT&T's provisioning of comparable service to the CLEC community is imperative to the CLECs as it directly affects the ability to provide end users with shorter intervals of downtime and therefore the ability to compete in the marketplace. When the CTTR exceeds a certain threshold, CLECs see an increase in customer complaints due to extensive downtime

which reflects directly on the CLECs' ability to compete and retain customers. Further metric results are as follows:[7]

> - For two products - Resale Business (Non-Design) (Dispatch), and UNE Digital Loop >= DS19 (Non-Dispatch) - the Maintenance Average Duration was longer for CLECs than AT&T in 12 consecutive months of the year. AT&T's failure to provide similar service to the CLECs as it provides to its Retail customers for a year exhibits a systemic issue and still requires constant monitoring. It is imperative that the Commission retain this measure and address the systemic problem.
>
> - In 8 of the 11 products that had a Dispatch type of "Dispatch", the CLECs experienced a longer Maintenance Average Duration than AT&T. The CLECs' ability to continually monitor AT&T's performance of these measures is essential to ensure parity and to allow the Commission to address systemic issues.
>
> - Approximately 45% (123 out of 276 months total) of the months in this report that could be measured, resulted in the CLECs being given a longer Maintenance Average Duration than AT&T. The CLECs strongly desire to retain this measure so further monitoring of this metric can be explored to reduce the customer's downtime.

CompSouth believes that the appropriate cure for these issues is for AT&T to perform and to increase SEEMs, not to change measures to mask performance or remove SEEMs from Commission oversight.

M&R -4 [PRT]: Maintenance. Percent Repeat Customer Troubles within 30 Calendar Days.

AT&T Business Rules state the following:

> Customer trouble reports considered for this measure are those on the same line/circuit, received within 30 calendar days of an original customer trouble report. Candidates for this measure are determined by using either the 'cleared date' from LMOS or the 'closed date' from WFA of the first trouble, and the 'received date' of the next trouble.

[7] See prior footnote.

CLECs place trouble reports in a number of applications, including ACTS, EBTA and CPSS. It is unclear to us if these applications carry forward the same "cleared" or "closed dates" that are applied in WFA or LMOS. The "cleared date" or "closed dates" should be reflected in the application where the trouble report resides.

AT&T proposes to delete the disaggregation category of UNE Other Designed. The CLECs have requested a measurement in the past that covers Commingled services. We believe that this disaggregated category would be a place to measure Repeat Customer Troubles within 30 Calendar Days, and recommend leaving it in place for that purpose.

M&R -5 [OOS]: Maintenance Out of Service (OOS) > 24 Clock Hours.

The AT&T Business Rules state:

> Customer trouble reports that are out of service and cleared in excess of 24 clock hours. The clock starts when the customer trouble report is created in LMOS/WFA and is counted if the elapsed time exceeds 24 clock hours.

CLECs place trouble reports in a number of applications, including ACTS, EBTA and CPSS. It is unclear to us if these applications carry forward the same clocking that is derived from LMOS or WFA. Clocking needs to be derived from the application where the trouble report resides. CompSouth members are also experiencing differences in the levels of AT&T's response to trouble reports between when the report is handled via the portal versus live phone calls, which needs to be addressed. CompSouth opposes AT&T's proposal to eliminate Tier I or Tier II remedies for this metric. Finally, CompSouth raised a clarification question related to whether additional interfaces/systems should be added to the Business Rules to more accurately affect

recent OSS changes by AT&T. CompSouth reserves the right to make a proposed change related to this question once AT&T provides a response to CompSouth's question.

AT&T proposes to delete the disaggregation category of UNE Other Designed. The CLECs have requested a measurement in the past that covers Commingled services. We believe that this disaggregated category would be a place to measure Maintenance Out of Service (OOS) > 24 Clock Hours, and recommend leaving the metric in place for that purpose.

M&R-6 [MAAT]: Average Answer Time – Repair Centers – CompSouth did not propose changes to this metric. CompSouth opposes AT&T's proposed revision in the Benchmark through removal of the "parity" benchmark. "Parity" in this instance has specific meaning that does not necessarily equate to "Direct comparison", and therefore, should be maintained.

F. Billing Metrics.

AT&T requests that all of the Billing performance metrics be eliminated and has set forth three flimsy reasons in support of this request. CompSouth feels significant attention is needed for the Billing metrics and has proposed a new fee schedule in its SEEM proposal in addition to shorter intervals to resolve disputes. The request AT&T makes now contrasts greatly with the statements legacy BellSouth made in its efforts to obtain interLATA relief under Section 271 where these billing metrics were defined as "Key BellSouth Performance Measures."[8] AT&T now, post 271 relief grant, argues that, because of some perceived need to "simplify the plan,"

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[8] See BellSouth Ex parte letter from Jonathan Banks to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, dated October 17, 2002.
http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513296629

because billing measurement for rendering bills to the CLECs "do not measure performance that impacts the CLEC customers," and because current processes are in place for dealing with billing disputes on a business-to-business basis, these "Key" billing performance measures are no longer needed. None of these reasons is valid and CompSouth submits that the billing metrics should not be eliminated. The billing metrics should be strengthened and refined so that they better achieve their goal of protecting the public and the marketplace from discrimination by AT&T.[9]

AT&T's argument that the billing metrics do not measure performance that impacts the CLEC customer is also incorrect and, moreover, not relevant. Clearly, a CLEC's ability to operate profitably impacts its customers and the service a CLEC can provide to its customers. If AT&T is overcharging a CLEC, and causing a CLEC undue financial liability, this directly affects the CLEC's profitability and therefore directly affects the service the CLEC can provide its customer. Further, AT&T's argument in this regard is not relevant because the purpose of this metric is to incent AT&T to provide CLECs with non-discriminatory treatment compared to the service AT&T provides its retail customers.

AT&T's third reason for eliminating the billing performance metrics is that current processes are in place for dealing with billing disputes on a business-to-business basis. This reason is also incorrect, misdirected and not relevant. The CompSouth membership companies have no business-to-business process with AT&T to deal with any discriminatory billing treatment on UNEs. Further, the Commission should be concerned with the maintenance of a

[9] In this Section, CompSouth has proposed three (3) minor changes to the current billing metrics in an effort to increase AT&T's incentive to correct its billing problems and eliminate the discriminatory billing service it has been providing wholesale customers. These changes provide the Commission examples of the types of changes it should make to this and other categories of AT&T's SQM and SEEMs plan to provide AT&T an incentive to procure the resources necessary to eliminate discriminatory wholesale service.

telecommunications marketplace that encourages the development of competition. The elimination of the billing performance metrics and SEEMs plan would be highly detrimental to the development of competition in Florida because it would eliminate one of the few means left for CLECs to incent AT&T to provide non-discriminatory service. The only alternative would be cost-prohibitive litigation.

AT&T's billing performance has, historically, been less than stellar. It takes very significant CLEC employee resources – often entire departments – to carefully review bills from AT&T and dispute inappropriate charges. Weakening the billings metrics will allow AT&T to weaken its already poor billing performance, saving itself the cost of SEEM payments as well as the cost of providing reasonably accurate bills in reasonable timeframes. It will cost CLECs more – not only in the form of more disputes and more incorrect, untimely charges to argue with AT&T about but also in the form of additional employees needed to review the bills received. These are the reasons CompSouth has proposed new fee schedules for the billing metrics, as well as shorter intervals to resolve disputes.

B-1 [BIA]: Invoice Accuracy

The purpose of the B-1 performance metric was to provide an incentive for AT&T to render accurate resale, UNE and interconnection invoices. AT&T has proposed that this performance measure be eliminated. As discussed above, however, AT&T has provided no reasonable explanation on how or why eliminating this metric would benefit anyone other than AT&T.

The current billing performance Invoice Accuracy metric needs to be improved, not eliminated. Improvements to the Invoice Accuracy performance metric are necessary because,

due to its structure, the current metric does not provide AT&T enough incentive to render accurate wholesale bills. This is primarily because the wording of the current exclusion terms in this metric permits AT&T to exclude nearly all of its wholesale billing errors from measurement. For example, currently, all wholesale billing disputes that are resolved by a settlement agreement are excluded from measurement. Wholesale billing disputes resolved via settlement agreements make up a significant portion of total billing disputes. This is because most, if not all, financially large billing disputes are resolved via settlement agreements. Therefore, the current practice of excluding adjustments rendered due to settlement agreements from billing performance metrics masks a large portion of AT&T's wholesale billing errors from detection and performance penalty payments. This exclusion of wholesale service settlement credits should not be permitted to continue because it circumvents the purpose of the metric.

In addition, billing credits or "adjustments to satisfy the customer" are excluded from measurement and penalty payment calculations. This language provides AT&T a billing performance metric loophole large enough to drive all of its billing through simply by declaring that an adjustment was necessary to "satisfy the customer." As a threshold matter, it should be assumed for the purpose of billing performance calculations that all billing adjustments provided by AT&T to CLECs are due to AT&T billing errors and AT&T gives NO wholesale billing credits simply to "satisfy the customer". Therefore, billing adjustments to "satisfy the customer" should not be excluded from the calculation of this billing performance metric.

There is also an issue regarding whether billing dispute credits are being correctly categorized for the purpose of this invoice accuracy performance metric. Frequently, CLECs receive billing invoice credits for BARs that have been "denied" by AT&T. AT&T's action of

issuing a system-generated dispute "denial" and providing CLECs a billing credit for the amount of the dispute may cause this invoice accuracy performance metric to be miscalculated. Credits for denied billing disputes may be mis-categorized by AT&T as "adjustments to satisfy the customer," and therefore, under the current exclusion terms of this metric, excluded from billing accuracy metric calculations. The issue of whether wholesale billing dispute credits have been mis-categorized in this manner by AT&T warrants further investigation.

B-2 [BIT]: Mean Time to Deliver Invoices

The purpose of the B-2 performance metric is to provide AT&T an incentive to render wholesale invoices "on-time," where "on-time" was defined as a period of time in parity with AT&T's retail billing period. AT&T has proposed that the B-2 performance measure be eliminated, however again, as discussed further above, AT&T has provided no reasonable explanation of why eliminating this metric would benefit anyone other than AT&T.

This performance metric is currently performing adequately, as AT&T's performance at delivering an invoice within a reasonable period of time of the end of the bill cycle has been good. AT&T's current billing difficulties have more to do with rendering an accurate invoice than they are at rendering a timely invoice. Because the metric appears to be working and because timely billing continues to be important, making no modification to this performance metric is most appropriate at this time.

B-5 [BUDT]: Usage Data Delivery Timeliness

The purpose of this performance metric is to provide AT&T an incentive to deliver usage data records to CLEC in a timely manner. AT&T has proposed that the B-5 performance

measure be eliminated, however as discussed further above, AT&T has provided no reasonable explanation of why eliminating this metric would benefit anyone other than AT&T.

This performance metric is currently performing adequately as AT&T performance at delivering usage data record in a timely manner has been good. Because this metric appears to be working and because receiving usage data in a timely way is important for CLECs, making no modification to this performance metric is most appropriate at this time.

B-10 [BEC]: Percent Billing Adjustment Requests (BAR) Responded to within 40 Business Days

The purpose of this performance metric is provide AT&T an incentive to act on a CLEC billing disputes in a timely manner so that billing disputes do not go on forever. AT&T has proposed that the B-10 performance measure be eliminated, however as discussed further above, AT&T has provided no reasonable explanation of why eliminating this metric would benefit anyone other than AT&T.

AT&T is a vast $120+ billion dollar a year company and has the financial and administrative resources to overwhelm any and all CLECs. As such, it certainly is in the public interest to provide AT&T an incentive to act promptly on good faith billing disputes submitted by CLECs, and not allow AT&T to flex its administrative resources to the detriment of new market entrants. Unfortunately, due to its current structure, this performance metric does not adequately accomplish its purpose. Therefore, while this metric should not be eliminated, it should be revised so that it better accomplishes its purpose and provides an incentive to constrain the negative effects that AT&T's administrative power can have on the market.

This metric partially currently fails its purpose because it only requires AT&T to "respond" to a BAR within 40 days, it does not require AT&T to put forth any investigation into its response and does not penalize AT&T for forcing CLECs to resubmit the same BAR over and over again. AT&T can meet this performance metric by simply providing CLECs an off-the-cuff and uninvestigated denial to a BAR. Such an off-the-cuff denial to a BAR does not serve the constructive purpose of forwarding the resolution of a billing dispute. Such an uninvestigated denial of a BAR can be done and is done in routine fashion by AT&T simply to circumvent the SEEMs payments associated with this performance metric. This action actually makes the billing dispute process worse for the CLECs because the CLEC has to expend more resources and resubmit BARs over and over again to attempt to obtain action by AT&T. As such, a new performance metric, subordinate to B-10, is needed to track resubmitted BARs and penalize AT&T for forcing CLECs to resubmit BARs. This new performance metric is needed to eliminate the perverse "deny all claims within 40 days" incentive that B-10 creates for AT&T.

G. Trunk Group Performance.

TGP-1 [TGP]: Trunk Group Performance – CompSouth opposes AT&T's wholesale changes to this metric, particularly with respect to the addition of Exclusions that are not justified, changes in the intervals for performance of AT&T's trunks provided to CLECs, changes in the Calculation of the benchmark, and an increase in the benchmark that would allow AT&T to provide lower service to CLECs. Many CompSouth members utilize AT&T trunking for incoming and outgoing traffic and, therefore, any change that would affect the performance or expected performance of the trunks, is unjustified at this time. Trunking performance directly affects the CLECs' ability to provide service to end users. In addition, CompSouth opposes

elimination of Tier I and Tier II remedies for this metric for the reasons previously stated. CompSouth raised a question with respect to the Exclusions to gain a better understanding of when trunking data becomes invalid. Until such time as AT&T has provided sufficient information to this question, CompSouth reserves the right to dispute any Exclusion dealing with invalid data.

H. Collocation.

C-1 [ART]: Collocation Average Response Time – CompSouth opposes AT&T's proposed elimination of this metric. Collocation is a key component to facilities-based CompSouth members, and, therefore, any activity, particularly with respect to timeliness, is of critical importance to CompSouth. This metric, while diagnostic at this time, provides key data to track AT&T's response to collocation applications. In today's environment, CLECs typically file augment applications, rather than applications for new collocation arrangements, and therefore the response time frames should be shortened. CompSouth proposes two changes to this metric: (a) to standardize the response time benchmark for all levels of disaggregation to 7 days; and (b) to make this metric subject to Tier I remedies. The interval response time varies between interconnection agreements and even in the metric itself. For simplification and ensuring that a response is filed within a timely fashion, CompSouth seeks to shorten and to standardize the time frame. In addition, because a timely response and approval of a collocation application directly affects the CLECs' ability to provide efficient and timely service to customers, this metric should be subject to Tier I remedies.

C-2 [AT]: Collocation Average Arrangement Time – Just as a timely response to a collocation application is important, likewise the time that AT&T takes to provision a collocation

arrangement is critical in the steps of enabling a CLEC to provide good quality service to its customer. CompSouth opposes elimination of this metric because it deals with tracking AT&T's performance to provision collocation arrangements to facilities-based CLECs. Consistent with its proposed changes to C-1 above, CompSouth proposes to: (a) shorten the provisioning interval benchmarks, (b) make this metric subject to Tier I remedies. The time frames listed in the current benchmarks are outdated and do not reflect the more streamlined process that AT&T has in place and by which the CLECs expect timely provisioning of the collocation arrangement. In addition, this metric should be remedied because of its direct impact on a CLEC's ability to provide service to its customers.

C-3 [MDD]: Collocation Percent of Due Dates Missed – CompSouth did not propose any changes to this metric. CompSouth opposes AT&T's removal of the Tier I and Tier II remedies for the reasons stated above with respect to C-1 and C-2.

I. Change Management.

CM-1 [NT]: Timelines of Change Management Notices – CompSouth opposes elimination of this metric as it serves as a means to track and to ensure timeliness notices to CLECs resulting from the Change Management Process ("CMP"). CMP remains an important tool for CLECs to attempt to obtain changes in processes used with AT&T to make the process more efficient and better. Likewise, implementation of AT&T's software change has a direct impact on the CLECs' processes and ability to offer and to provide services. AT&T has indicated its intent to move more towards its 13-State processes, including CMP, which CompSouth believe are less formalized or timely. Software changes have a direct impact on the

CLECs' processes and provisioning, as the implementation may require changes within the CLEC's processes. Therefore timely notice remains as important today as before. In addition, because of the importance of timely notice, CompSouth proposes to make this metric subject to Tier I remedies. In addition, CompSouth proposes to delete the current Exclusion of changes to release dates for reasons outside of AT&T's control. The example provided in the exclusion deals with "a patch to fix a software problem." AT&T's vendors are under their direct control and AT&T can mandate time frames for patches. It is far too easy to blame an untimely notice or implementation of a fix to correct a problem on a vendor, and given the types of contracts that AT&T has with its vendors, such an exclusion is unwarranted.

CM-3 [DT]: Timeliness of Documentation Associated with Change – CompSouth opposes elimination of this SMP metric. This metric tracks and reports the timeliness of documentation associated with an AT&T interface or OSS change. Needless to say, it is highly important for CLECs to timely obtain all documentation associated with an AT&T change so that CLECs can prepare and determine what changes, if any, they need to make in its processes. Because of the importance of the documentation and receiving it in a timely manner, CompSouth not only proposes to retain the metric, but all make it subject to Tier I remedies. CompSouth reserves the right to more fully develop the method that the Tier I remedy will be assessed.

CM-5 [ION]: Notification of CLEC Interface Outages – CompSouth opposes elimination of this metric. The purpose of this metric is to track and to impose a benchmark of expected time frame for AT&T to provide timely notice of CLEC interface outages. Needless to say, it is of vital importance to a CLEC's operations to have timely notice of when there is an outage and, therefore, the CLEC is precluded from processing orders for provisioning new

service, changes to current service, or maintenance and repair. Because of the importance of outage notices and timely receipt of those notices, CompSouth proposes to make this metric subject to Tier I remedies. CompSouth also updated the Interfaces listed in the Disaggregation to reflect the new interfaces currently used by CLECs.

CM-6 [SEC]: Percentage of Software Errors Corrected in "X" Business Days – Both AT&T and CompSouth agree that this metric should be retained. The issue becomes whether there are modifications needed to make this metric more meaningful, not only in terms of reported key activities, but also what remedies should be associated with missing the benchmarks. CompSouth proposes to eliminate the Exclusion that excludes implementation of software changes that have an agreed due date between AT&T and CLECs. A missed implementation date has the same effect on CLECs – whether it is date set by AT&T or through agreement between CLECs and AT&T. The expectations remain the same and the CLEC's preparation for that software fix is the same regardless of how the implementation date was set. These statements are more particularly true when dealing implementation fixes of software errors. Accordingly, CompSouth also proposes to make this metric subject to Tier I remedies. Again, CompSouth reserves the right to flesh out the implementation of the Tier I remedies at a later time. Finally, CompSouth raised the need to discuss the EDR Report and AT&T's claim that it has 5 days to evaluation whether the patch placed in production is actually working. Because those discussions are still taking place in the collaborative, CompSouth reserves the right to propose further revisions as needed to resolve this issue.

CM-7 [CRA]: Percentage of Change Requests Accepted or Rejected within 10 Business Days – CompSouth opposes elimination of this metric. This metric measures the

percentage of change requests submitted by CLECs that are accepted or rejected by AT&T in 10 business days (excluding Type 1 or 6 change requests). These change requests, and AT&T's timely response to those requests, impact the CLECs (AT&T's wholesale customers) if the change request is not timely handled or implemented. Accordingly, CompSouth proposes two changes to this metric: (a) increase the benchmark from 95% to 98% to drive further improvements to AT&T's responses; and (b) make this metric subject to Tier I remedies. CompSouth reserves the right to flesh out the details of how to apply Tier I remedies.

CM-8 [CRR]: Percent Change Requests Rejected – CompSouth opposes elimination of this metric. AT&T should not be allowed to reject change requests as a routine matter, and CompSouth submits that is what will happen if this metric is eliminated. It is important for AT&T to take change requests from CLECs seriously as CLECs make these requests only when problems arise that cannot be corrected through cooperation between AT&T and the CLEC. Often, the problems that one CLEC experiences are consistent with those experienced by other CLECs. Therefore, it is important to maintain the correct incentive for AT&T to consider and to act upon the change requests. As a result, CompSouth proposes to make this metric subject to Tier I remedies. In addition CompSouth proposes to include add a new level of disaggregation to report the number of defects introduced by a minor release, as AT&T is implementing minor releases with more regularity.

CM-9[NDPR]: Number if Defects in Production Releases (Type 6 CR)- CompSouth opposes the elimination of this metric. AT&T argues this simplifies the plan when in truth this will mask problems with AT&T's delivery of less than quality system releases. A type six (6) Defect has a time measured interval for correction in the current Change Control Process (CCP)

Guideline which AT&T seeks to avoid. If AT&T is allowed to supply less than quality tools the CLEC's bear the burden of increased operating expense, consumer service delays and possibly delayed ability to bill their customers correctly depending on the nature of the defect. CompSouth proposes to retain this metric in its present state, to change does not simplify, but rather introduces more work for AT&T to make the proposed changes.

CM-10 [SV]: Software Validation – CompSouth did not propose any changes to this metric. CompSouth opposes elimination of this diagnostic metric as it tracks AT&T's performance to validate test results for the releases of its local interfaces. Validation of results is important to ensure that the software implementation is successful, which in turn affects the CLECs' ability to use the modified software. The information from this process is used to assist CLECs in determining the GO/No GO decision associated with placing a release into production. Again AT&T seeks to avoid the CCP Guideline in favor of the Change Management Process used by its 13 state region.

CM-11 [SCRI]: Percent of Software Change Requests Implemented within 60 weeks of Prioritization-

CompSouth opposes AT&T's elimination to "simplify the plan." The Florida Commission agreed to a 50/50 Plan where CLEC's and AT&T share the capacity for enhancements equally. This is yet another attempt of AT&T to side step its obligations. (It should be noted that AT&T often rejects the CLEC's requests and has failed to implement "Best Practice" Change Requests submitted over 18 months ago under the merger conditions.) Again AT&T seeks to remove itself from the CCP obligations in favor of the CMP process. Since these

changes have direct impact on the CLECs productivity, CompSouth has proposed this become a Tier I metric.

CM-11A [PCRI]: Average Time to Implement Process Change Requests-

Once again CompSouth opposes AT&T's requested elimination of the metric. The elimination simply equates to AT&T removing itself from CCP obligations. The CompSouth proposal adds the Accept Held requests which were previously excluded, this will provide clearer insight to AT&T's delay tactics. Again, CLEC's would note the because of the exclusion, the Best Practice request discussed above were not included in this measure.

Appendices

In Appendix B, AT&T proposes to limit the Commission's audit rights to one AT&T paid audit per plan version and adds a dispute resolution provision. CompSouth has concerns with both of these changes. As to the former, CompSouth does not believe there is justification for this change. The Commission should be able to audit whenever it believes circumstances warrant. Further, the per-plan-version condition seems arbitrary; there is no predictability for when plan changes may occur. As to the latter change, while CompSouth hesitates to over-write interconnection agreement provisions for a specific purpose, any independent SQM dispute resolution procedure should make clear that CLECs do not waive any rights under the plans, interconnection agreement or Commission's orders by agreeing to dispute resolution or if dispute resolution is not strictly adhered to.

CompSouth opposes AT&T's changes to Appendix D. AT&T's deletion in paragraph 5 has not been explained and it is unclear to CompSouth if a different threshold for data reposting is proposed. It appears that the other significant changes to this Appendix (deleting paragraphs 7, 8, and 9) stem from AT&T's proposal to commercialize Tier I and eliminate Tier II seems, both of which CompSouth opposes.

CompSouth opposes AT&T's request to eliminate the data notification process in Appendix F. CompSouth is open to discussing a modified mechanism whereby the notification process occurs, perhaps via a carrier notification prior to the change, but calls are not held unless requested within a set time after notification. The Commission's oversight role in the process should remain the same.

Until such time as CompSouth's concerns with establishing measures for commingled circuits (circuits which combine a UNE with special access, typically) is addressed, CompSouth opposes deletion of Appendix H and the diagnostic measures for special access.

V. COMMERCIAL AGREEMENTS FOR SEEMS.

CompSouth opposes AT&T's request to move its SEEMs obligations into separate commercial agreements. Not only would this approach oddly sever SEEMs from the SQMs to which they relate in terms of Commission control, review, monitoring, auditing, and enforcement and thus create additional opportunity for AT&T to obfuscate and litigate its SEEMs obligations in a separate forum, but it is premised on a legal theory that CompSouth maintains is incorrect.

The law is well established that any agreement between an ILEC and a CLEC pertaining to the provision of Unbundled Network Elements (UNEs) must be submitted to state

commissions for approval pursuant to 47 U.S.C. § 252(a)(1).[10] Service level agreements (SLAs) for the provision of UNEs (performance measures) must also be filed for approval pursuant to 47 U.S.C. § 252(a)(1) and FCC precedent because they pertain to UNE obligations and cannot be discriminatory. Penalty plans for failure of those SLAs are equally intertwined with – or "pertain to" – the delivery of UNEs, and are, consequently, subject to 252(a)(1).

It does not appear that AT&T is debating that it must provide UNEs on a non-discriminatory basis to all carriers. AT&T does appear to take the position that monetary payments to carriers for failing its non-discrimination obligations can be made on a discriminatory basis. Specifically, AT&T has recently stated that it does not believe it has a filing obligation under 252(a)(1) for "commercial" agreements which create binding contractual obligations for AT&T to make payments for failures under the Florida Commission-run performance plan.[11] If AT&T's view of the law is correct, which it is not, AT&T inevitably invites the situation where, outside the sight of the Commission, AT&T will pay CLECs different amounts for precisely the same harms. That is manifest discrimination in the provision of UNEs. Such a regime would be illegal.

CompSouth's position is that the governing law is Section 252(a)(1) as interpreted by the FCC. Section 252(a)(1) provides:

(a) AGREEMENTS ARRIVED AT THROUGH NEGOTIATION. –

[10] Memorandum Opinion and Order, *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, FCC Order No. 02-276, ¶¶ 8 and 9 (released October 4, 2002)("FCC Order on Filing Requirements").

[11] Other ILECs do not have the temerity to make this assertion. Petition for Declaratory Ruling of Qwest Communications International, Inc., *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, filed April 23, 2002, page 29 ("Qwest Petition").

> 1. VOLUNTARY NEGOTIATIONS. – Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

In 2002, the FCC was asked by Qwest in a Petition for Declaratory Ruling to define the parameters of the filing requirement under 252(a)(1).[12] In that Petition, Qwest asked the FCC to narrowly construe 252(a)(1) as only requiring the filing of agreements addressing the "detailed schedule of itemized charges for interconnection and each service or network element included in the agreement."[13] The FCC largely rejected Qwest's proposed reading and broadly construed the filing obligation and the term "interconnection agreement" to encompass "an agreement that creates an ***ongoing*** obligation ***pertaining*** to resale, number portability, dialing parity, access to right-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation" and ruled that such agreements "must be filed pursuant to section 252(a)(1)."[14]

Qwest specifically asked the FCC if, among other types of agreements, an agreement providing for dispute resolution and escalation provisions needs to be filed pursuant to 252 (a)(1). The FCC stated that such provisions must be filed:

> We are not persuaded by Qwest that dispute resolution and escalation provisions are *per se* outside the scope of section 252(a)(1). Unless this information is

[12] Qwest Petition.

[13] *Id.* at pp. 10, 29.

[14] FCC Order on Filing Requirements at ¶ 8 (emphasis added).

> generally available to carriers (*e.g.*, made available on an incumbent LEC's wholesale web site), we find that agreements addressing dispute resolution and escalation provisions ***relating*** to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements. The purpose of such clauses is to quickly and effectively resolve disputes regarding section 251(b) and (c) obligations. The means of doing so must be offered and provided on a nondiscriminatory basis if Congress' requirement that incumbent LECs behave in a nondiscriminatory manner is to have any meaning.[15]

Accordingly, the question of whether an agreement must be filed hinges on two issues: (1) does the agreement address an ongoing obligation; (2) pertaining to or relating to, among other topics, UNEs.[16] Notably, whether the subject of the agreement is an obligation under 251 or 252 is not at issue (dispute resolution, for instance, is not a 251 or 252 obligation). Because the payments at issue here are (1) ongoing; and (2) directly relate to the provision of UNEs, there should be no doubt that agreements containing them must be filed pursuant to 252(a)(1) and FCC precedent.

In its petition, Qwest readily conceded that "any binding contractual commitments regarding the quality or performance of the service or network element" should be filed.[17] AT&T argues that "binding contractual commitments" with certain CLECs "regarding"[18] the "quality and performance" in its provision of UNEs need not be filed. AT&T endeavors to mask the manifest regulatory parameters governing such agreements by calling them "commercial

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[15] *Id.* at ¶ 9 (emphasis added).

[16] A SEEMs **agreement** would not be some type of severable procedure or guideline one could incorporate and cross-reference into another agreement, as if directing CLECs to an information source, but would constitute contractual, on-going and substantive obligations pertaining to 251 and 252 requirements. The FCC was clear in the *Qwest Order* that such on-going obligations were interconnection agreements and must be filed. In the *Qwest Order*, the FCC also stated that state commissions were well positioned to clarify on a case-by-case basis which matters must be contained in filed interconnection agreements, as guided by the FCC's announced test. CompSouth maintains that there is no question here that SEEMs cannot be placed in a commercial agreement outside Commission authority.

[17] Qwest Petition at 29.

[18] AT&T suffers a logical disconnect to the extent it asserts that SEEM payments are not made "regarding" SQM failures, because the SQMs trigger the SEEM payments.

agreements." These are not the "commercial agreements" related to 271, which several courts ruled are outside the requirements of 251(a)(1). The subject of AT&T's new "commercial agreement" is directly tied to the provision of UNEs.[19] That subject is one the FCC and the Act clearly place within the purview of section 252(a)(1).

Accordingly, any "commercial" agreement pertaining to payments for performance failures AT&T may reach with any CLEC in Florida must be filed with the Florida Commission and approved pursuant to 47 U.S.C. § 252.[20]

CompSouth also asserts that moving SEEMs into commercial agreements would run afoul of the FCC's guidelines for SEEMs plans, announced in the FCC's 271 decisions. Those guidelines are discussed in Section VII below. A commercial agreement, subject to expiration, which AT&T has the resources and incentive to litigate in multiple forums are can hardly motivate AT&T to meet is obligations under section 251 and 271 of the Act.

VI. TIER II PAYMENTS.

At this time, CompSouth opposes AT&T's proposal to eliminate Tier II payments to the Commission under the SEEMs plan. While CompSouth is open to discussing specific changes to Tier II, CompSouth has grave concerns with eliminating Tier II altogether at a time when AT&T is simply not fulfilling its legal obligation to provide non-discriminatory access.

If Tier I payments alone, whether as structured now or as proposed by AT&T, were sufficient to incent AT&T to provide non-discriminatory access, surely by now, more than six

[19] The issue here, as it is with dispute resolution provisions, is ***IF*** AT&T has an agreement on that subject, does it need to be filed under 252. The answer for both is the same: if the agreement creates an ongoing obligation pertaining to the provision of UNEs, then they must be filed.

[20] It should be noted that such a negotiation, if undertaken voluntarily by AT&T, is subject to arbitration pursuant to 47 U.S.C. § 252. *Coserv v. Southwestern Bell Telephone Co.*, 350 F.3d 482 (5th Cir. 2003).

years after plan implementation, AT&T would have little or no Tier II exposure. But that is sadly not the case. As the CLECs reported on the July 29 conference call with staff, AT&T has paid over $330,000 in Tier II payments so far in 2009. The metrics that AT&T has missed to trigger Tier II liability have been largely the same every single month. AT&T argues that it already has sufficient incentive to perform with Tier I liability and that markets are "irreversibly" open. If $330,000 in Tier II payments plus what AT&T pays in Tier I payments is not sufficient incentive for AT&T to perform, no one can logically expect that eliminating AT&T's Tier II obligation will incent AT&T to maintain, let alone improve, its performance. The truth is that it less expensive for AT&T to pay Tier II than it is to fix the wholesale service problems that continually trigger Tier II liability. That is why Tier II payments "add nothing," as AT&T states, to its performance incentives -- not because AT&T already has sufficient incentive. Surely, greater SEEMs exposure would add something to AT&T's incentive to perform.

Tier II SEEMs are also appropriate because the state itself loses when AT&T's wholesale performance is poor. Harm to competition and greater barriers to entry result from poor wholesale performance. Both are a detriment to Florida consumers –residential and business – because diminished competitive alternatives translate to less innovation, fewer choices and higher prices. Tier II SEEMs incent AT&T to perform so as to minimize the harmful effects that directly impact the State of Florida.

CompSouth also disagrees with AT&T's hollow protestation about a permanently open market.[21] Florida's communications markets are addressed more in Section VII below; however, suffice to say that the market, for business customers in particular, might quickly snap back to a

[21] CompSouth is unaware of any finding at the state or federal level to the effect that markets are irreversibly open, as AT&T argues.

monopoly if there were no monitoring of AT&T's performance and no SEEMs plan to incent AT&T to perform.

VII. FEDERAL AND STATE LAW REQUIRE MEANINGFUL PLANS.

As noted earlier, nondiscriminatory access to network elements, including OSS, is required by Section 251 and 271 of the Act and the FCC's implementing rules. SQM plans were developed as a means of measuring and monitoring that access as well as to ensure continuous nondiscriminatory access. SQMs were not a one-time test for opening markets under Section 271. The FCC relied heavily on the existence of robust SQM and SEEMs plans under the scrutiny of the state commissions when the FCC evaluated RBOC 271 applications, including BellSouth's Florida application.

> [W]e find that the existing Service Performance Measurements and Enforcement Mechanisms (SEEM plans) currently in place for Florida and Tennessee provide assurance that these local markets will remain open after BellSouth receives section 271 authorization. The Florida Commission's and the Tennessee Authority's oversight and review of their respective plans and their performance metrics provide additional assurance that the local market will remain open. In prior orders, the Commission has explained that one factor it may consider as part of its public interest analysis is whether a BOC would have adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market. Although it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms, the Commission previously has found that the existence of a satisfactory performance monitoring and enforcement mechanism is probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority.[22]

[22] FCC Memorandum and Opinion Order No. 02-331, *In the Matter of Application by Bellsouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Authorization to Provide In-Region, Inter LATA Services in Florida and Tennessee*, WC Docket No. 02-307. Rel December 19, 2002. ("*Florida and Tennessee 271 Order*"), ¶ 167.

The FCC considered information made available pursuant to the plans in determining that state markets were open to competition, citing to, and attaching, then-current performance data under the plans.

Without both the proof of existing, and assurance of continued nondiscriminatory access, AT&T would not have received authority under Section 271 to provide in-region inter-LATA service - indeed the SQM and SEEMs plans were integral to the FCC's granting AT&T 271 authority. In its Florida 271 Order, the FCC stated, "Our conclusions are based on a review of several elements in any performance assurance plan: total liability at risk in the plan; performance measurement and standards definitions, structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures in the plan; and accounting requirements."[23] Further, effective remedy plans like the Florida SEEMs plan were, and remain, a key tenet of continuous nondiscriminatory access in accordance with Sections 251 and 271. The FCC noted five important requirements for SEEMs plans, unchanged since the time they were announced:

> [P]otential liability that provides a meaningful and significant incentive to comply with the designated performance standards; clearly-articulated, predetermined measures and standards which encompass a comprehensive range of carrier-to-carrier performance; a reasonable structure that is designed to detect and sanction poor performance when it occurs; a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and reasonable assurances that the reported data are accurate.[24]

If AT&T cannot show that it is providing **and** will continue to provide nondiscriminatory access now or at any time in the future, AT&T is subject to FCC enforcement action under 271(d)(6),

[23] Id. at ¶ 169.
[24] Id. at ¶ 170, note 613 (citing SWBT Texas Order).

including revocation of its 271 authority. Nothing about the Act has changed in this regard. Compliant SQM and SEEMs plans continue to be a necessary and integral element for ensuring AT&T's performance under the Act.

The SQM and SEEMs plans were originally developed by the states, with the encouragement and cooperation of the FCC.[25] The FCC has stated that states are responsible for the going-forward oversight of the plans; and, likewise, the FCC has recognized that post-approval enforcement under section 271(d)(6) of the Act would be a cooperative effort by the FCC and the state commissions:

> The Florida Commission and Tennessee Authority will continue to subject BellSouth's performance metrics to rigorous scrutiny in the on-going proceedings and audits . . . .
> . . . .
> Working with each of the state commissions, we intend to closely monitor BellSouth's post-approval compliance to ensure that BellSouth does not "cease[] to meet any of the conditions required for [section 271] approval."
> . . . .
> We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to BellSouth's entry into Florida and Tennessee.[26]

Aside from the section 271 role described above, the Florida Commission is also charged with enforcing the nondiscrimination requirements of the Act, including Section 251 and 252, through its interconnection agreement arbitration/enforcement authority. Additionally, the Florida Commission relied on its powers under state law when ordering the SQM plan for AT&T. Specifically, the Commission referenced its authority under Florida Statutes sections 364.01(3) (declaring regulatory oversight necessary for the development of competition) and 364.01(4)(g) (granting the Commission authority to ensure all telecommunications providers are

[25] E.g., FPSC Order No. PSC-09-0165-PAA-TP, issued March 23, 2009, page 3.

[26] *Florida and Tennessee 271 Order*, ¶¶ 171, 182, 183.

treated fairly by preventing anticompetitive behavior). The Commission also relied on section 364.162, Florida Statutes, holding:

> [S]tate laws implementing interconnection agreements are not preempted by federal law if they are consistent with the 1996 Act. Section 364.162, Florida Statutes, authorizes us to set nondiscriminatory rates, terms and conditions of interconnection. . . . . In this proceeding, the appropriate terms to encourage non-discriminatory access are adequately defined measures, benchmarks and analogs. Consequently, we have the authority under state and federal law to implement the measures, benchmarks, and analogs contained in this Order.

Meaningful SQM and SEEMs plans, supervised by the Commission, are necessary to ensure AT&T's continued compliance with the pro-competitive, non-discrimination requirements of both state and federal law. Whether in the name of "re-focusing," "simplifying," or "commercializing" the plans, AT&T's proposals in this docket, if accepted, will serve to mask discriminatory treatment by AT&T, re-write the book on assuring performance, marginalize the Commission's role in market monitoring and enforcement, and, in sum, upset the delicate balance of the Act. At stake is robust competition in Florida.

AT&T's proposals in this matter have nothing to do with organic movement toward deregulation in competitive retail markets or leveling the playing field among competitors, but have everything to do with an opportunity to create undue leverage in AT&T's favor. According to the Commission's 2009 Competition Report, residential access lines and CLEC market share for residential customers have shrunk significantly over the last several years as regulatory changes came about and as cable, VoIP and wireless captured market share. Overall CLEC market share has declined as a result. Those declines notwithstanding, in the business market, CLECs hold a solid 25% market share as of December 2008, down from a peak of 34% in June 2005. Total business access lines have declined from a peak of 4.3 million in June 2006 to 3.6

million, but the number of business access lines has been about the same from 2001 to 2008, unlike residential access lines. Cable and wireless are not as significant players in the business market as they are in the residential market, and wireless may never be. Although cable has recently entered the business market with some success, cable's market penetration is inhibited by non-ubiquitous facility and business model considerations.

Thus, competition, particularly in the business market, depends on CLEC services. CLECs, and, by extension the business market itself, rely on this Commission to police meaningful SQM and SEEMs plans to ensure AT&T is providing non-discriminatory access to underlying wholesale facilities to CLECs. If AT&T is permitted to discriminate in wholesale performance or provide poor service to CLECs, the business customers that are the economic engine of Florida will suffer the result: diminished choice, pricing options, innovation, and services. Moreover, as a matter of principle, regulation of wholesale services is even more critical where, as here, one provider owns nearly all available wholesale facilities. Significantly, nothing in the retail deregulatory measures from the 2009 Legislative session in Florida impacted this Commission's authority and responsibility over wholesale issues. The Florida Commission's duties to ensure nondiscriminatory access to wholesale facilities and encourage competition remain the same under both federal and state law.

VIII. CONCLUSION.

CompSouth applauds Florida for its leadership in having a commitment to strong performance standards and believes this leadership will again guide the parties through any needed changes or compromises. However, CompSouth maintains this review process is ill-timed, for the reasons stated earlier. Major OSS changes will take place between the present and

April 2008, so AT&T should be held to the strictures of the current plan until those OSS changes occur. The LNP Guidelines for Simple and Non-Simple Porting are under way, with a proposal to NANC scheduled for later this year, which will prompt other plan changes. To this backdrop, consider further that AT&T is attempting to remove the agreed-upon South East Change Control Guidelines. AT&T is needlessly moving too much too fast on the OSS side and this often leads to problematic outcomes for CLECs and their customers. Moreover, it should not escape notice that AT&T started a crusade earlier in the year to eliminate its Tier II obligation by year end, rather than focusing on AT&T's own shortfalls in wholesale performance.

CompSouth believes the existing plan approved by this Commission can serve both parties until the hurdles of the forthcoming changes are addressed. CompSouth will continue to work to understand AT&T's position, will attend workshops and conference calls, and will strive to continue to provide exceptional service to the consumers in the state of Florida.

RESPECTFULLY SUBMITTED this 3rd day of September, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail or electronically to the following parties of record this 3rd day of September, 2009:

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