

Ruth Nettles

000121A-TP

From: Woods, Vickie [vf1979@att.com]
Sent: Friday, November 06, 2009 4:32 PM
To: Filings@psc.state.fl.us
Subject: 000121A-TP AT&T Florida's Resp in Opp to STS' Motion to Accept Intervenor STS' Additional Comments Concerning AT&T's Motion for Expedited Approval of Funding for Lifeline Outreach and for Modification of the Seem Penalty Payments
Importance: High
Attachments: Document.pdf

- A. Vickie Woods
Legal Secretary to E. Earl Edenfield, Jr., Tracy W. Hatch,
and Manuel A. Gurdian
BellSouth Telecommunications, Inc. d/b/a AT&T Florida
150 South Monroe, Rm. 400
Tallahassee, FL 32301-1558
(305) 347-5560
vf1979@att.com
- B. Docket No. 000121A-TP: In Re: Investigation into the Establishment of Operations Support Systems Permanent Incumbent Local Exchange Telecommunications Companies.
- C. BellSouth Telecommunications, Inc.
on behalf of Tracy W. Hatch
- D. 8 pages total in PDF format (Letter, Certificate and Pleading)
- E. AT&T Florida's Response in Opposition to STS' Motion to Accept Intervenor Saturn Telecommunications Services, Inc.'s Additional Comments Concerning AT&T's Motion for Expedited Approval of Funding for Lifeline Outreach and for Modification of the Seem Penalty Payments

.pdf

<<Document.pdf>>

11/6/2009

DOCUMENT NUMBER-DATE

11182 NOV-6 8

FPSC-COMMISSION CLERK



Tracy W. Hatch
General Attorney

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

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

November 6, 2009

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

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

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's
Response in Opposition to STS's Motion to Accept Intervenor Saturn
Telecommunications Services, Inc.'s Additional Comments Concerning AT&T's
Motion for Expedited Approval of Funding for Lifeline Outreach and for Modification
of the SEEM Penalty Payments, which we ask that you file in the captioned docket.

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

Sincerely,


Tracy W. Hatch

Enclosures

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

DOCUMENT NUMBER-DATE

11182 NOV-6 09

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 000121A-TP

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

Electronic Mail and U.S. Mail the 6th day of November, 2009 to the following:

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

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

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

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

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

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

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

Beth Keating
Akerman Law Firm
106 East College Avenue
Suite 1200
Tallahassee, FL 32301
beth.keating@akerman.com

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

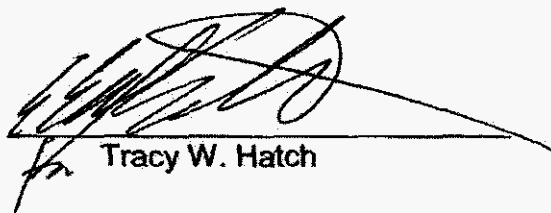
Cbeyond Communications, LLC
Charles E. (Gene) Watkins
320 Interstate North Parkway
Suite 30
Atlanta, GA 30339
Tel. No. (678) 370-2174
Fax No. (978) 424-2500
gene.watkins@cbeyond.net

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

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

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

Law Offices of Alan C. Gold, P.A.
Alan Gold
1501 Sunset Drive Second Floor
Coral Gables, FL 33143
Tel. No. (305) 667-0475
Fax. No. (305) 663-0799
agold@acgoldlaw.com
Represents STS



Tracy W. Hatch

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the establishment)
of operations support systems permanent)
performance measures for incumbent local)
exchange telecommunications companies.)
(AT&T FLORIDA TRACK))

DOCKET NO. 000121A-TP

Filed: November 6, 2009

**AT&T FLORIDA'S RESPONSE IN OPPOSITION TO STS'S MOTION TO ACCEPT
INTERVENOR SATURN TELECOMMUNICATIONS SERVICES, INC.'S
ADDITIONAL COMMENTS CONCERNING AT&T'S MOTION FOR EXPEDITED
APPROVAL OF FUNDING FOR LIFELINE OUTREACH AND FOR MODIFICATION
OF THE SEEM PENALTY PAYMENTS**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Response in Opposition to Saturn Telecommunications Services, Inc.'s ("STS") "Motion to Accept Intervenor Saturn Telecommunications Services, Inc.'s Additional Comments Concerning AT&T's Motion for Expedited Approval of Funding for Lifeline Outreach and for Modification of the SEEM Penalty Payments" and in support thereof states:

1. On October 23, 2009, STS served on AT&T Florida a Motion to Intervene and Request to Hold in Abeyance AT&T's Motion for Expedited Approval of Funding for Lifeline Outreach and for Modification of the Self-Effectuating Enforcement Mechanism, or Alternatively Deny the Request. The document was not filed with the Commission until October 27, 2009.
2. AT&T Florida responded in opposition to STS's Motion to Intervene and to its Request for Abeyance on October 30, 2009.

DOCUMENT NUMBER-DATE

11182 NOV-6 8

FPSC-COMMISSION CLERK

3. On October 30, 2009, STS served on AT&T Florida its Motion to accept additional comments on AT&T Florida's Motion for Expedited Approval of Funding for Lifeline Outreach and for Modification of the Self-Effectuating Enforcement Mechanism.¹

4. AT&T Florida objects to STS's Motion to accept additional comments. STS's Motion should be summarily denied for both procedural and substantive reasons.

5. STS's submission of "additional comments," ostensibly to bolster its opposition to AT&T's underlying Motion for Lifeline funding and to eliminate Tier 2 penalties, is an untimely attempt at a second response to AT&T's Motion and should be denied on that basis alone. Pursuant to Rule 28-106.204, STS is required to respond to AT&T's Motion within 7 days of service of AT&T's Motion. STS did so. Now STS wants to respond yet again with all new irrelevancies. It should be noted that nowhere in its Motion does STS even attempt to suggest a reason by which it could be excused from not including the additional comments in either its "Motion to Intervene" or its "Request to Hold in Abeyance AT&T's Motion for Expedited Approval of Funding for Lifeline Outreach and for Modification of the Self-Effectuating Enforcement Mechanism." STS had every opportunity to include the information in its additional comments in its timely filed first response and it failed to avail itself of that opportunity. STS is not entitled to a "second bite" at a response, particularly where STS has utterly failed to provide any reason it was unable to include the information in its response. STS's continued scattershot efforts to throw any and all extraneous information at AT&T's Motion regardless of relevancy or the controlling rules should not be countenanced by the Commission.

¹ STS Motion suggests that its additional comments are intended as supplemental to its prior Request to Abate but also suggests, alternatively, that the additional comments could be used to supplement its Motion to Intervene. In either case, AT&T Florida's response applies equally to either scenario.

6. Moreover, in essence, STS is attempting to file a Reply to AT&T Florida's Response to its Motion. As the Commission is well aware its Rules do not expressly authorize reply memorandum. See Rule 28-106.204, Florida Administrative Code. See also, *In re: Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. for violations of the Telecommunications Act of 1996*, Order No. PSC-00-1777-PCO-TP, Docket No. 980119-TP (Sept. 28, 2000) at 3 ("neither the Uniform Rules nor [the Commission's] rules contemplate a reply to a response to a Motion."); *In re: Petition for approval to revise customer contact protocol by BellSouth Telecommunications, Inc.*, Order No. PSC-04-0636-FOF-TL, Docket No. 031038-TL (July 1, 2004) at 4 ("the Uniform Rules of the Administrative Procedure Act do not expressly authorize replies."); *In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies*, Order No. PSC-04-0511-PAA-TP, Docket No. 000121A-TP (May 19, 2004) at 2 ("we do not have rules which allow for a Reply to a Response"); and *In re: Implementation of requirements arising from Federal Communications Commission's triennial UNE review: Local Circuit Switching for Mass Market Customers*, PSC-04-0343-FOF-TP, Docket No. 030851-TP (April 2, 2004) at 2 ("our rules do not contemplate any pleadings filed in reply to a response to a motion").

7. Because reply memoranda are not expressly authorized, a party must seek leave before filing a reply. However, the Commission generally refuses to allow parties to file reply memoranda, even when leave is sought. See *id.*; see also, *In re: ITC—DeltaCom Communications, Inc.*, Order No. PSC-00-2233-FOF-TP, Docket No. 990750-TP, (Nov. 22, 2000) at 2; *In re: Okeechobee Generating Co., L.L.C.*, Order No. PSC-99-2438-PAA-EU, Docket No. 991462-EU, (Dec. 13, 1999) at 4-5.

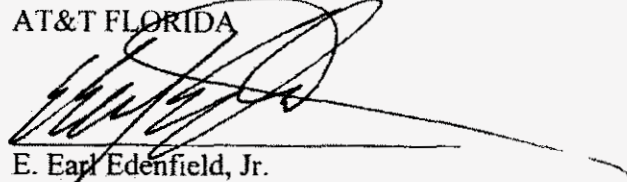
8. STS has not provided a valid reason for this Commission to deviate from its general rule that reply memoranda are not permissible and no such justification exists here.

9. The substance of STS additional comments attached to its Motion is totally irrelevant to the issue of Lifeline funding and the elimination of Tier 2 penalties. In fact, nowhere does STS even mention Tier 2 penalties in its additional comments. STS's additional comments are yet another diatribe devoted solely to discussing its own misperceived plight and not addressing the immediate issue. In this instance, the comments are in essence a complaint about the Commission and the Commission's approved SQM/SEEM Plans regarding SQM metrics for unbundled network elements comingled with other network services not provided pursuant to Section 251 of the Telecom Act. Again, this is totally irrelevant to the narrow issue of Lifeline funding and removal of discriminatory Tier 2 penalties. As AT&T Florida noted in its prior response to STS, performance measures established by the Commission will continue to measure AT&T Florida's OSS performance regardless of any commingling and regardless of which ordering interface is used.

WHEREFORE, for the reasons set forth above, AT&T Florida respectfully requests that the Commission deny STS's Motion to accept additional comments on AT&T Florida's Motion for Expedited Approval of Funding for Lifeline Outreach and for Modification of the Self-Effectuating Enforcement Mechanism.

Respectfully submitted this 6th day of November, 2009.

AT&T FLORIDA

A handwritten signature in black ink, appearing to read "E. Earl Edenfield, Jr.", is written over a horizontal line. The signature is stylized and somewhat illegible.

E. Earl Edenfield, Jr.

Tracy W. Hatch

Manuel A. Gurdian

c/o Gregory R. Follensbee

150 South Monroe Street, Suite 400

Tallahassee, Florida 32301

(305) 347-5558

750416