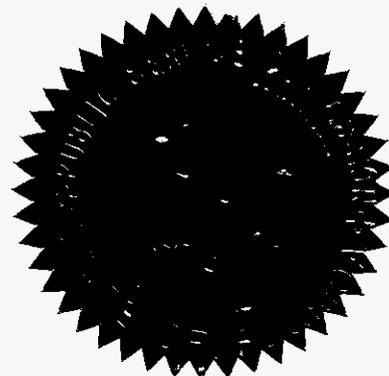


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 000121A-TP

INVESTIGATION INTO THE
ESTABLISHMENT OF OPERATIONS
SUPPORT SYSTEMS PERMANENT
PERFORMANCE MEASURES FOR
INCUMBENT LOCAL EXCHANGE
TELECOMMUNICATIONS COMPANIES.
(AT&T FLORIDA TRACK)



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 6

COMMISSIONERS
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT

DATE: Tuesday, December 15, 2009

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
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P R O C E E D I N G S

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3 **CHAIRMAN CARTER:** Let's move on to Item 6.

4 Okay then. Everybody ready? Staff, you're recognized.

5 **MR. HALLENSTEIN:** Good afternoon,

6 Commissioners. Jerry Hallenstein with staff.

7 Item 6 addresses AT&T's motion for expedited
8 approval of Lifeline outreach funding and modification
9 to AT&T's self-effectuating enforcement mechanism
10 payment plan, otherwise known as the SEEM plan.

11 Staff is recommending for the Commission to
12 defer any ruling on AT&T's motion until staff's current
13 review of AT&T's wholesale performance assessment plan
14 is completed and all proposed changes to the plan can be
15 brought back as a whole to the Commission for decision.

16 Staff would note that AT&T has paid an average
17 of \$1.24 million in Tier 2 remedies over the past five
18 years, and would further note that a staff workshop is
19 scheduled for tomorrow to discuss SEEM issues. This
20 process in the past has been successful in reaching a
21 compromise between the parties.

22 Mr. Chairman, the parties are here to speak on
23 this issue.

24 **CHAIRMAN CARTER:** Okay. Let's go.

25 **MR. HATCH:** Good morning, Commissioners.

1 **CHAIRMAN CARTER:** Good morning -- or good
2 afternoon, is it? I guess afternoon.

3 **MR. HATCH:** It is afternoon after all.

4 **CHAIRMAN CARTER:** You're recognized, Mr.
5 Hatch.

6 **MR. HATCH:** I'm Tracy Hatch. I'm appearing on
7 behalf of AT&T Florida.

8 We disagree with the staff's recommendation.
9 We are here to urge you to move forward on our motion to
10 eliminate the Tier 2 automatic penalties and to proceed
11 to adopt our suggested portion of those penalties to
12 fund the Lifeline outreach program that AT&T currently
13 engages in.

14 I don't think I need to tell you how important
15 Lifeline is. That's a thing that's well known at the
16 Commission and endorsed by the Commission.

17 It's critical, I believe to, a critical key
18 to, to Lifeline outreach is the education that the
19 outreach program provides. Without that outreach, then
20 people don't get to really know. And if they don't
21 know, then they can't take advantage of what Lifeline
22 is. Currently outreach has been funded by the community
23 service fund, which is a fund that AT&T has funded
24 historically through various agreements with the
25 Commission as available sources of fundings have become

1 available.

2 The Lifeline fund currently is essentially
3 empty. And we are proposing, as a source of funding, is
4 to take \$250,000 out of what would be Tier 2 payments to
5 fund Lifeline outreach because we think that's an
6 important thing to do.

7 Now with respect to the Tier 2 payments
8 themselves, as noted in the staff recommendation, AT&T
9 Florida, then BellSouth, now AT&T, volunteered as part
10 of the performance measures process to incur, to subject
11 itself, if you will, to penalty payments in the event
12 that we did not perform consistent with the standards
13 set forth in the SQM process.

14 We did that, and the purpose of that voluntary
15 commitment was to provide additional assurance to the
16 CLEC community and to the Commission that we would
17 essentially implement our obligations under state and
18 federal law to open our markets to competitors.

19 We are now I guess probably 14 years from the
20 implementation of the Telecom Act. We are six years
21 from the implementation of the 271 process. We submit
22 to you that the purpose of our voluntary commitment for
23 Tier 2 payments has been fulfilled and that there is no
24 longer any requisite need to incur those payments.

25 In short, I think that we have demonstrated

1 over time that our markets are open and that we have
2 kept them open. That was the original purpose of our
3 commitment to provide the assurance. That assurance is
4 no longer needed. Competition is out there.

5 I would also point to you to the fact that
6 competition is alive and well, the FCC has done three
7 bicentennial or biennial, rather, compliance audits of
8 our federal obligations to keep our markets open and to
9 perform under both 251 and 271 of the Telecom Act. In
10 addition to the FCC -- and we have passed those audits
11 successfully for three of them.

12 Also of note is the Commission itself has
13 found that there is competition in the State of Florida
14 through its own competition report. I don't think that
15 there's any serious question before the Commission that
16 competition is not alive and well and out there. If you
17 have any question about whether there's competition,
18 AT&T has lost 40 percent of its access lines between
19 2002 and 2008. Those access lines went somewhere. They
20 went to competitors in the marketplace.

21 Now staff suggests in its recommendation with
22 respect to the Commission's authority to impose Tier
23 2 penalty payments and it cites essentially to two
24 different statutory provisions. One is 364.01(3), and
25 in that section they essentially paraphrase that

1 provision, and it says that the Commission has a duty to
2 oversee the regulatory oversight, to ensure regulatory
3 oversight to ensure the development of full and
4 effective competition.

5 One of the things that they left out of that
6 statement in paraphrasing the statutory authority is
7 they left out a key qualifier. That key qualifier that
8 says that in the transition from monopoly to
9 competition, competitive provision of local exchange
10 service, that is what the regulatory oversight is for
11 and is directed towards. And we submit to you that we
12 are past that process or way on the far end of that
13 process. There is clear competition in the market here
14 in Florida, both residential and business.

15 The other statutory provision that staff cites
16 is 364.01(4)(g). That section essentially says that the
17 Commission should ensure fair treatment for all
18 competitors. They also left a piece out of that, that
19 provision. That provision also includes a provision
20 that the Commission should eliminate any regulatory
21 oversight that's unneeded or unnecessary. And in both
22 of these instances we would submit to you that there is
23 competition. So the notion that you need to oversee
24 full and effective competition, that necessity has
25 lessened and essentially is over because it's out there,

1 it's working.

2 In addition to that, we view Tier 2 as an
3 unnecessary regulatory burden that we bear that
4 shouldn't be borne at this point, having gone through
5 all this process and demonstrated there is competition.

6 I would tell you that all the other -- outside
7 the southeast in AT&T's 13 other states in which it
8 operates one state never had Tier 2 penalties. All the
9 other states that had them have now eliminated them.
10 They have all essentially said there is no necessity for
11 Tier 2 penalties any longer, particularly very large
12 states with very active regulatory oversight such as
13 California, Texas, Michigan, Illinois, states like that.
14 All of those states have at some point eliminated all of
15 their Tier 2 penalties because they were no longer
16 required.

17 The nine southeast states --

18 **CHAIRMAN CARTER:** You're, you're winding down,
19 right, Mr. Hatch?

20 **MR. HATCH:** I'm going to be -- close. The
21 nine southeast --

22 **CHAIRMAN CARTER:** No. You're winding down;
23 right?

24 **MR. HATCH:** Yes.

25 **CHAIRMAN CARTER:** Thank you.

1 **MR. HATCH:** The nine southeast states operate
2 essentially under a universal, or a single plan. Most
3 of that work was done in Florida and it was translated
4 to all the other southeast states. Pretty much whatever
5 happens in Florida translates into those other plans in
6 all the other states. We think that it's time to move
7 forward and eliminate Tier 2.

8 There is one further insidious effect of Tier
9 2, and that is that AT&T Florida is the only large ILEC
10 in Florida that is subject to Tier 2 penalty payments.
11 Both Verizon and Embarq, now CenturyLink, each have
12 performance measure plans substantially similar to
13 AT&T's, yet only AT&T has been singled out for
14 performance measure plans. Now I will tell you we
15 volunteered for that initially and that is a distinction
16 as to why it was otherwise okay. We have now
17 essentially, by moving the Commission to eliminate it,
18 unvolunteered. We do not see that there's any basis
19 upon which you can single out AT&T and impose Tier 2
20 remedy payments in, in, as in comparison or vis-a-vis
21 other ILECs. Essentially that's a parity argument. We
22 are not being treated the same as the other ILECs with
23 substantial, substantially the same performance measure
24 plans. And I will wind up with that.

25 One, one point that I would finally make is

1 win, lose or draw, if you adopt the staff's
2 recommendation, I would suggest to you that -- the
3 staff's recommendation is essentially to do nothing and
4 wait. But I would tell, I would suggest to you or make
5 a request of you that if you adopt the staff's
6 recommendation and wait, then we would request that you
7 essentially allow us to escrow our Tier 2 penalty
8 payments until the outcome of the proceeding as staff
9 has suggested you do. That way, win, lose or draw,
10 those penalty payments would be protected. If we should
11 get them, fine. If the state should get them, fine.
12 Whatever happens to them will happen to them.

13 **CHAIRMAN CARTER:** Thank you, Mr. Hatch.

14 **MR. FEIL:** Mr. Chairman, I'm Matthew Feil with
15 Akerman Senterfitt in Tallahassee. I'm here
16 representing Competitive Carriers of the South, also
17 called CompSouth and NuVox. With me here also is
18 Ms. Mary Conquest, who is the Director of Regulatory and
19 Industry Affairs for NuVox. I'm not here to argue that
20 Lifeline should not be funded. That's not --

21 **CHAIRMAN CARTER:** Good. Then we're going to
22 be all right. You and I are going to be all right, if
23 that's the case.

24 **MR. FEIL:** Unfortunately it's not quite that
25 simple as AT&T has, has framed it, but outreach has

1 nothing to do with Tier 2 payments. There's no linkage
2 inherent between the two, there's nothing mutually
3 exclusive about keeping Tier 2 and outreach funding.
4 AT&T has just stitched the two issues together to lure
5 this Commission into making what we feel is a
6 ridiculously lopsided bargain. This isn't a compromise
7 offered by AT&T, it's just a bad deal for the state.

8 The fact is that what AT&T wants, permanent
9 elimination of Tier 2, is of significantly greater value
10 economically and from a policy standpoint than what AT&T
11 is offering. The staff rec touches on this, but I want
12 to emphasize this: The Tier 2 payments are essentially
13 state-issued fines for AT&T's failure to meet
14 Commission-approved service quality measures for
15 wholesale service. And make no mistake, AT&T has failed
16 and continues to fail those service quality measures.
17 That's why AT&T has paid over \$6 million in Tier 2
18 payments for the last five years and over \$11 million
19 since this plan came into effect.

20 I have an exhibit that may help so that you
21 can see the amount of the Tier 2 payments for the prior
22 years as well as for a month-to-month total or
23 month-to-month analysis for 2009.

24 **CHAIRMAN CARTER:** You may approach. Thank
25 you.

1 (Pause.)

2 You may proceed.

3 **MR. FEIL:** Thank you, Mr. Chairman. There are
4 really only two points I wanted to raise with regard to
5 this exhibit. One is that there's really no pattern
6 year to year in the amount of Tier 2 payments that you
7 can perceive at least over the last five years. And
8 with respect to 2009, and actually for prior years, AT&T
9 has made various adjustments sometimes a year after the
10 fact after a service quality measure has been calculated
11 and a payment has been made where they try to true it up
12 even as late as a year after the fact.

13 The money, to be clear, goes into the state
14 general revenue fund. It's not going into anybody
15 else's pocket. AT&T by its proposal here wants to take
16 therefore millions from the state and have you do that
17 without looking even at the other issues in the case.

18 The Tier 2 payments are in place for a reason.
19 They're in place to incent AT&T to perform and meet the
20 service standards. When AT&T does not perform, when it
21 discriminates against competitive carriers, competition
22 and hence consumers suffer. This Commission recognized
23 that when it put the performance measures into place in
24 the first instance.

25 What does poor performance by AT&T mean in the

1 real world? Poor performance hits small business and
2 competitive carriers particularly hard because
3 competitive carriers focus on the business market. If
4 you look at your competition report, which Mr. Hatch
5 made reference to, 25 percent of business competition
6 comes from competitive carriers. That's not from cable,
7 that's not from over the top VoIP, that's not from
8 wireless. That's from wireline CLEC carriers.

9 Poor performance jeopardizes a big segment of
10 the business market's opportunity to choose innovative
11 products, lower prices from competitive carriers because
12 those competitive carriers have no place to go but to
13 AT&T for wholesale inputs needed to serve those small
14 business customers.

15 All of you except Commissioner Klement, who
16 wasn't here at the time, may remember the last time a
17 few months ago when we were here to talk about service
18 quality measures and AT&T. The issue then was whether
19 or not the Commission should double remedy payments or
20 show cause AT&T for a failure in April of 2008 to its
21 OSS systems after a software release. That was the
22 April 2008 software release. And you may remember at
23 that time the Commission decided not to double the
24 payments and at that time not to show cause AT&T, even
25 though it found that the April 2008 release was a,

1 quote, unquote, critical failure.

2 The other part of that decision was the
3 Commission said let's wait to see what AT&T's next
4 software release goes like. Well, here we are before
5 the next big software release and they are asking to
6 eliminate a big portion of the SEEM payments that are
7 critical to incenting AT&T to perform.

8 While I would urge you to decide the questions
9 of outreach and Tier-2 separately, you have a number of
10 tools in your decision-making toolbox and the
11 alternative that AT&T offers is not the only tool you
12 can use. As to Tier-2, I urge you to address that in
13 the context of overall SQM performance, as staff
14 recommends. CompSouth and NuVox support the staff
15 recommendation. You should reserve ruling on this
16 issue.

17 One other, or a few other quick comments, and
18 I'll retort to what Mr. Hatch said with regard to other
19 states and what has happened in other -- or transpired
20 in other states regarding Tier-2.

21 We are not familiar with any other state where
22 Tier-2 payments were singled out and addressed separate
23 and apart from the rest of an SQM proceeding. In the
24 other cases that we are familiar with, CLECs either
25 agreed to it or chose not to participate. For example,

1 in Nevada, which is an order that AT&T cites, there was
2 a stipulation. It included the entire comprehensive
3 service quality plan and Tier-2 was removed from that.
4 The CLECs did not oppose the stipulation.

5 One other point with regard -- or two others
6 points with regard to what has happened in other states.
7 First is none of those other states had to deal with a
8 critical failure in a software release. None of those
9 other regions had to deal with a critical failure in a
10 software release. The other is in terms of comparing
11 the SQM plans in the midwest region or the southwest
12 region of Florida, I don't think anybody has done a
13 comparison to say, yes, these are apples-to-apples, or
14 apples-to-oranges, or apples to some other type of fruit
15 in terms of looking at the measures, the performance,
16 the Tier-2 exposure, and the Tier-2 payments.

17 Mr. Hatch made an argument about AT&T being
18 singled out. Well, they have been singled out under the
19 Telecom Act as it was approved in 1996. Carriers fell
20 into different categories and different carriers were
21 treated differently for different purposes under the
22 Telecom Act. That is why AT&T was treated or has been
23 treated the way it has. It's a legacy RBHC. It was
24 subject to the 271 process under the Act. It was part
25 of the compromise under the Act, and now AT&T is here

1 asking to change the rules in the middle of the game.
2 With that, I will reserve anything further for your
3 questions. Thank you.

4 **CHAIRMAN CARTER:** Mr. Konuch.

5 **MR. KONUCH:** Dave Konuch on behalf of the
6 Florida Cable Telecommunications Association. FCTA
7 fully supports the staff recommendation. These are all
8 very complex issues, but the fact of the matter is
9 because they are complex, there is another proceeding
10 going on right now to address Tier-2. And there have
11 been catastrophic failures in OSS, so now is not the
12 time to really think about removing the Tier-2
13 penalties, and there surely are other ways to ensure
14 that outreach is continued to be funded. Thank you.

15 **CHAIRMAN CARTER:** Thank you.

16 Commissioners?

17 **MR. GOLD:** I was at the end. If I may, sir.

18 **CHAIRMAN CARTER:** Oh, okay. You're the odd
19 man out.

20 **MR. GOLD:** There were no seats left there.

21 **CHAIRMAN CARTER:** Oh, okay. You're
22 recognized.

23 **MR. GOLD:** I thank you. Good afternoon. My
24 name is Allen Gold. I represent Saturn
25 Telecommunications Services, Inc., which is a long name.

1 For brevity, I will refer to it as STS. Sitting behind
2 me is Keith Cramer (phonetic) the Executive
3 Vice-President, who would like just a few words when I
4 am finished.

5 **CHAIRMAN CARTER:** You can make your statement.
6 We're going to move forward, so just make your
7 statement, okay?

8 **MR. GOLD:** Yes, sir. The question before this
9 Commission is whether it should deny the staff's
10 recommendation to complete its review of AT&T's
11 performance before eliminating a mechanism which is
12 agreed to by AT&T not out of the goodness of their
13 hearts because they wanted to volunteer monies to the
14 good citizens of the state of Florida, but to gain a
15 profit, to get 271 relief. It was, in part, a mechanism
16 designed to protect competition by penalizing the abuses
17 of AT&T when they failed to comply with performance
18 measures.

19 In the last several years, according to the
20 Commission's own numbers, AT&T's market share has grown
21 in comparison to the competitive CLECs. Presently
22 pending before the FCC is some very serious charges by
23 STS, in which I'm involved, alleging numerous 271
24 violation, monopolistic behavior, and anticompetitive
25 behavior which will be decided on its merits very

1 shortly, and was briefly pointed out that AT&T is doing
2 a massive OSS change. The first one was a disaster, and
3 if you look at the charts that were given to you, there
4 were a total in that year of over \$2 million in Tier-2
5 payments.

6 We are not asking the Commission to decide
7 whether to eliminate or to continue with Tier-2
8 payments. The question before the Commission is whether
9 it should eliminate such an important mechanism that was
10 designed to protect the citizens of the state and to
11 foster competition without a full review, and it would
12 seem that at the very least a full review should be
13 required.

14 As far as STS's position, we recognize and
15 nobody wants to jeopardize Lifeline and the Outreach
16 program, and we would have no objection to AT&T
17 receiving a credit which, again, would promote
18 competition, but to make a trade-off just doesn't seem
19 right before all the facts are known, and we believe the
20 facts will show that competition is needed to be
21 protected against AT&T.

22 **CHAIRMAN CARTER:** You heard what Mr. Hatch was
23 saying in his perspective. I'm just going to tell you,
24 and to use my verbiage, and I'm talking to the other
25 companies now, is that based upon the Tier-2 -- these

1 are my words, not Mr. Hatch's words -- it would put AT&T
2 at a competitive disadvantage because it's the only
3 company that is subjected to that. And, first of all,
4 it was voluntary, and after the competition has
5 increased tremendously, and therefore not necessarily
6 needed. So what is your response to that?

7 **MR. GOLD:** Again, it was voluntary if they
8 wanted to get the 271 relief in Florida. It was a
9 trade-off. As far as being the only company to do it,
10 they were a legacy RBHC. It was -- they are different
11 than the other companies.

12 And I think the real issue at this point is
13 not whether Tier-2 should ultimately be eliminated, but
14 trying to do it by using a very worthwhile problem
15 program and avoiding the full review of this Commission
16 is very -- is very suspect. AT&T is in a unique
17 position as compared to everybody else within the state.
18 That is why -- that is why the federal government passed
19 the legislation that required the states to do a
20 competitive checklist. And now after three years or
21 four years to say, hey, time has passed, we have
22 complied with everything just doesn't make sense.

23 And as far as to say the FCC has approved us
24 and given us a green light just does not make sense.
25 STS has been involved for over probably seven or eight

1 months in a case in which we have alleged very serious
2 allegations that we believe the FCC is taking very
3 seriously as we're going through the discovery stage and
4 the last stage on to a formal hearing. It was not
5 thrown out summarily as AT&T desired, and what we are
6 asking this Commission to do is the same thing in this
7 instance.

8 **CHAIRMAN CARTER:** Okay.

9 **MR. GOLD:** Hear all of the facts before
10 jumping to conclusions. See and protect competition in
11 Florida. As far as STS is concerned, they have -- they
12 have basically been eliminated from the residential and
13 small business market which they were in for many years.
14 That is the basis of our complaint.

15 STS has been relegated to serving big business
16 when its core of business, up until several years ago,
17 has been the residential and small businesses. We
18 believe that this -- before an important mechanism is
19 eliminated, that this Commission should investigate it
20 as staff has recommended. And by making --

21 **CHAIRMAN CARTER:** Hang on.

22 **MR. GOLD:** -- a full investigation, I don't
23 know what the harm would be.

24 **CHAIRMAN CARTER:** Okay. Let's hear from the
25 other two companies. You heard my question that I

1 asked.

2 **MR. FEIL:** I was going to say in response that
3 AT&T certainly took advantage of the competitive
4 advantage of getting 271 relief, and now it's trying to
5 rewrite the Telecom Act now that it no longer likes the
6 way things are going, and it exposes AT&T to additional
7 costs in order to actually meet service quality
8 standards for providing competitive carriers with
9 wholesale inputs needed. And those inputs, again, serve
10 25 percent of the small and all business customers in
11 the state of Florida.

12 **MR. KONUCH:** And I would add that the cable
13 industry, we built our own network so that we hardly
14 have to use AT&T's network for anything. All that is
15 required for us to provide our service is a certain
16 degree of interaction with AT&T, yet even though we have
17 our own separate networks, in 2008 when they had the
18 catastrophic OSS failures, we still ended up losing
19 thousands of orders and it took months to straighten it
20 all out. That's why this really is not the time to
21 think about taking away incentives for AT&T to comply.

22 And also these issues, which are very complex,
23 I mean, it figures into all of the SEEM measures and the
24 SQM measures. There is a proceeding on it that has been
25 going on for months, and we were kind of surprised to

1 see that this issue was teed up outside of that
2 proceeding where, you know, there has been a lot of
3 evidence taken and a lot of discussions already held.

4 And I would say that -- I don't really want to
5 get too much into the merits of Tier-2, but I will say
6 that just objectively looking at it this doesn't look
7 like a very good deal for the state or even for Lifeline
8 outreach. Because the way we have looked at it, it's
9 pennies on the dollar for when the state could be
10 getting, you know, possibly millions over the next few
11 years. But also there is nothing in here that requires
12 AT&T to provide any additional on-going funding for
13 outreach.

14 So if the \$250,000 is spent this year, it is
15 gone. There is no new money coming in. So it really is
16 just a temporary solution, and it's purchased at a great
17 cost when you compare it to these ongoing incoming
18 revenues.

19 **CHAIRMAN CARTER:** Thank you.

20 Commissioners, I wanted to get -- I had that
21 on my brain, so I wanted to get it out there before I
22 forgot it. I may have some more questions, but I did
23 want to at least get that out there, get that question
24 off before I --

25 **MR. HATCH:** Mr. Chairman, may I respond

1 briefly?

2 **CHAIRMAN CARTER:** Mr. Hatch, you're
3 recognized.

4 **MR. HATCH:** Let me go through a couple of
5 points in response real quickly. First, with respect to
6 the 1.2 million average and the millions of dollars that
7 are at stake for the state of Florida, if you would look
8 at the exhibit that CompSouth handed out, start at 2005,
9 1.6-plus million. 2006, it dropped. 2007, it dropped.
10 2008, it went up. Now we went through the reasons for
11 the 2008 increase at length the last time we addressed
12 this issue. It was due to the failure of the April 2008
13 software release. That was a big release. We bit off
14 more than we could chew. Some of it went south, and so
15 we have paid the penalties and the price as was
16 acknowledged then.

17 We told you then we had put in practices and
18 procedures that that will not happen again. We have
19 done that. We have had four major software releases
20 since then. There have been no failures of those
21 software releases, including the most recent one that we
22 implemented in November. There are no more major
23 software releases planned. We have essentially done all
24 the software changes to essentially consolidate our 22
25 state OSS systems that we intend to do. Everything else

1 from here on out is going to be minor fixes and
2 maintenance.

3 Now, if you look at the payments, other than
4 2008, they all trend down. And if you look at the 2009
5 payments, they trend down to date total of \$384,000. If
6 you want to normalize this, and you isolate the problem
7 with 2008, take it out. Look how far down it has
8 trended and consistently trended down. So we do not
9 anticipate nor is there any serious projection of
10 anything remotely resembling the millions of dollars,
11 the 1.2 million average number moving forward into 2010.
12 It just simply isn't going to happen that way. It is as
13 we stated before, that they have trended down. We have
14 done all that we should be doing, and it's time to
15 eliminate Tier-2.

16 With respect to the questions about 271, 271
17 was a process that was overlaid on the RBHCs,
18 essentially the Regional Bell Operating Companies. It
19 was an overlay onto the 251/252 process where the Bell
20 companies had additional hoops they had to jump through
21 in order to obtain long distance relief. If you were
22 not a Bell Operating Company, you got long distance
23 relief, if you will. It was already there for the
24 taking. For example, GTE and the other companies had
25 long distance authority as soon as the Telecom Act

1 passed.

2 So, yes, there were additional hoops that we
3 have jumped through. We have jumped through those
4 hoops. That was essentially -- and the FCC has
5 concurred that we have jumped through those hoops and
6 have consistently maintained the standards under which
7 we are obligated to operate with their biennial
8 compliance audits. We have passed those audits, so we
9 are continuing to honor our 271 commitments.

10 To the extent that this could conceivably be a
11 271 issue, respectfully, the 271 process is a federal
12 issue. It is not a state commission issue. Even in the
13 127 process the state's role was only to consult and
14 advise the FCC. There was no substantive decision.

15 And, finally, with respect to 271 issues,
16 there is no requirement in 271 that there be any kind of
17 a penalty payment process. That was a process that we
18 came up with on our own to voluntarily assure the
19 community that we would honor our commitments. We have
20 done so. It is time to eliminate those penalty
21 payments.

22 With respect to the notion that somehow if you
23 eliminate the Tier-2 penalty payments our performance
24 will degrade and the CLECs will suffer, I would dispute
25 that. Our performance has demonstrated that it is

1 consistent and consistently better over time. But more
2 importantly, if you look at Verizon and Embarq, now
3 CenturyLink, they have never had any kind of penalty,
4 either Tier-1 or Tier-2. To say that the absence of
5 penalties somehow degrades performance belies the
6 competition that exists for them. There would be no
7 competition in their markets if you accept the premise
8 that you have to have penalty payments to ensure
9 competition. There is competition there and they
10 haven't had penalty payments, so you cannot make the
11 claim that reducing or eliminating these payments will
12 somehow lead to an absence or lack of competition.
13 Thank you.

14 **CHAIRMAN CARTER:** Thank you, Mr. Hatch.

15 Commissioners? Commissioner Edgar, you're
16 recognized.

17 **COMMISSIONER EDGAR:** I have two questions at
18 this point anyway. The first is I'd like to ask Mr.
19 Hatch to respond or to comment to the point that was
20 raised I believe by Mr. Feil about the timing of this
21 request vis-a-vis an impending software release.

22 **MR. HATCH:** Yes, ma'am. I believe Mr. Feil
23 misspoke, because we are done with the major software
24 releases. There are no more scheduled.

25 **MR. HALLENSTEIN:** Commissioners, may I add a

1 comment.

2 **COMMISSIONER EDGAR:** Please. I was just
3 looking nor a better understanding.

4 **MR. HALLENSTEIN:** Yes, they are done with the
5 major release. The latest release was in November, last
6 month. But remedies would not be shown or provided to
7 us until January 15th next month. Next year. So
8 there's a lag in the timing of the release and the
9 capture of the data and the process of determining the
10 SEEM payments. So we have yet to see any Tier-2
11 penalties associated with that release, if any.

12 **COMMISSIONER EDGAR:** The federal regulatory
13 lag thing again.

14 **MR. HALLENSTEIN:** Yes.

15 **MR. FEIL:** And, Commissioner, I'm sorry if I
16 did misspeak. What I meant to say, to be clear, was
17 that the major releases are not complete and here we are
18 changing the rules. But if there are additional
19 questions about the releases, Ms. Conquest (phonetic) is
20 here as well to help answer them.

21 **COMMISSIONER EDGAR:** I was just trying to
22 understand the timing with the point that I think you
23 raised or that I thought I was hearing.

24 **COMMISSION STAFF:**

25 **UNIDENTIFIED SPEAKER:** And I might add that

1 not all of the CLECs have completed their migration to
2 the new platform. Some are still in the process of
3 accomplishing that with their vendors and their support
4 systems, so it is really early for us to see the result
5 of this last November release. It was a very large one.
6 It involved a complete rewrite, moving to a new type of
7 code, an XML code, so it is something significant that
8 the CLECs have to address in order to be ready for next
9 year. And we do have another release coming up in March
10 of 2010, and so I think there is still some risk on the
11 table.

12 The retirements that AT&T had scheduled, they
13 have put a mitigation strategy in place. I talked about
14 that when I was here the last time, the fact we had no
15 roll-back plan. They are leaving some of the older OSS
16 systems in service so that, in fact, if the new system
17 does not work as projected and anticipated, you can fall
18 back and use one of the old tools that is available.

19 **COMMISSIONER EDGAR:** Mr. Hatch, if you have
20 anything to add or expand.

21 **MR. HATCH:** No, I think that is accurate. I
22 mean, there is a March release scheduled, but I
23 understand it is a minor kind of maintenance release to
24 do some clean up/fix it stuff.

25 **COMMISSIONER EDGAR:** Okay. And did you say

1 November last month release?

2 **MR. HATCH:** That was essentially the LEX
3 interface that was launched. That is the new thing that
4 everybody is essentially migrating to. We had
5 previously used a LENS interface, which is still up and
6 running and will be up and running until we are sure
7 that LEX is okay. And I would point out that the staff
8 is currently reviewing LEX, and essentially we have been
9 directed by the Commission to keep LENS up and running
10 until the staff is essentially satisfied that LEX is
11 okay.

12 **COMMISSIONER EDGAR:** One other --

13 **CHAIRMAN CARTER:** You're recognized.

14 **COMMISSIONER EDGAR:** -- question or comment.

15 **MR. HATCH:** Just to be clear, there has kind
16 of been some back and forth. There are two types of
17 penalties, there is Tier-1 and there is Tier-2. We are
18 not talking about Tier-1. Tier-1 are the payments that
19 if we fail, we compensate the CLECs for that failure.
20 That payment goes directly to them. Tier-2 is
21 overlaying on top of that is an additional piece of
22 incentive enhancement, if you will, to the penalty
23 process. That money is paid to the Commission for
24 deposit in the general revenue fund. We are only
25 talking about Tier-2.

1 **COMMISSIONER EDGAR:** Thank you.

2 And then I pose this to staff, and then if any
3 of the others would like to comment after that. Could
4 you help clarify for me what the relationship is from
5 this request pending before us right now, this request
6 and the other pending proceedings before the Commission.

7 **MR. HALLENSTEIN:** Are you referring to the
8 audit that Tracy had mentioned regarding the LEX and
9 LENS?

10 **COMMISSIONER EDGAR:** No, I'm sorry. Well, if
11 there are any other proceedings, actually. So that may
12 be one. That is not what I had in mind, but I'm trying
13 to understand how this, the request that is before us
14 right now, how it does interplay or relate to other
15 items that are pending before us. And most
16 specifically, I was looking at the discussion in the
17 item where it talks about the staff initiating the
18 periodic review and the data for that. But if there are
19 other dockets that are not a part of that but are
20 related, I'm just trying to understand how all of these
21 pieces fit together right now.

22 **MR. HALLENSTEIN:** We have an ongoing review
23 that was initiated, I believe, in May of this year that
24 looks at the entire performance review process,
25 performance measurement plan. As I indicated earlier,

1 we have a workshop scheduled for tomorrow that is
2 specifically going to discuss SEEM-related issues. The
3 statistical methodology and real convoluted and complex
4 issues.

5 This motion was never brought forward, and
6 when staff asked for comments on the conference calls,
7 this issue of Lifeline funding was never brought
8 forward, only just filed, somewhat as CLECs referred to
9 as, a surprise. Does that answer your question?

10 **CHAIRMAN CARTER:** That's probably because they
11 weren't paying attention to what we were doing over
12 here. I don't think it is a surprise to anyone that we
13 are supportive of Lifeline at this Commission.

14 **COMMISSIONER EDGAR:** Okay. Then so with that
15 workshop tomorrow, what are the next steps in that
16 process or in that review, and the time line, roughly?

17 **MR. HALLENSTEIN:** Well, after the workshop
18 tomorrow there will be some take away items. The
19 parties will discuss such items as which measurement
20 should be included in SEEM. Should it be Tier-1, should
21 it be Tier-2, and we will have a list of action items
22 which will be document requests. The parties would
23 follow up with those items, and then we would --
24 hopefully the parties would even -- we would encourage
25 negotiations between the parties and possibly reach a

1 stipulation as they did in the 13-state region, but this
2 is circumventing that process.

3 **COMMISSIONER EDGAR:** Okay. And then just a
4 follow-up, Mr. Chairman, and then I think I'm done for
5 the moment. Mr. Hatch, I think in your opening
6 statement you -- I believe, I don't mean to misstate,
7 but I think you said that if your request were not -- if
8 your request were not to be granted today, that sort of
9 in the alternative you would ask that the Commission
10 consider putting the Tier-2 payments into escrow until
11 after the proceeding. And I guess I'm trying to
12 understand -- again, I'm trying to think of timing.
13 Could you speak to that for a moment for me?

14 **MR. HATCH:** Yes, ma'am, I'll be glad to. We
15 announced, essentially, our intent to seek the
16 elimination of Tier-2 back in July. That was part of
17 our initial filing in the six-month review process. And
18 candidly, as Mr. Hallenstein said, we have attempted to
19 negotiate this since July and had put several offers on
20 the table over time. And the only substantive response
21 we got back to any of our offers was after this item got
22 published for agenda. So it was taking a lot of time.

23 Now, with respect to the surprise of Lifeline
24 funding, it's kind of a we're looking at the community
25 service fund dwindle and essentially finally go to zero,

1 and we're casting about saying what are we going to do,
2 what can we use as an alternative funding source. This
3 is the only thing on the table currently in the pipeline
4 or in the process that we could use, essentially, for
5 that function. But the Lifeline in and of itself, to be
6 clear, we are trying to eliminate Tier-2 independent of
7 Lifeline, but we think it's also a very useful vehicle
8 to continue Lifeline outreach funding.

9 **COMMISSIONER EDGAR:** But more specifically
10 then to the point of the timing, and if not that, the
11 escrow of the Tier-2 payments.

12 **MR. HATCH:** Essentially, the escrow is we
13 didn't -- when we filed our motion to sort of move
14 things along, if you will, we didn't anticipate that the
15 staff recommendation would say don't do anything, wait.

16 **COMMISSIONER EDGAR:** Surprise, again.

17 **MR. HATCH:** Exactly. I mean, we figured
18 either we would win or we would lose or some combination
19 thereof. But if you adopt the staff's recommendation
20 then we would request that to protect ourselves and
21 everybody involved that you would escrow the payments to
22 retain control over them.

23 **COMMISSIONER EDGAR:** Thank you.

24 **CHAIRMAN CARTER:** Staff, let me ask you --
25 it's probably going to sound like a weird question to

1 you, but why do we need Tier-2? What Mr. Hatch was just
2 saying is that Tier-1 has to deal with the relationship
3 with the CLECs and all. If there's any problems or
4 concerns, that's still there. Tier-2 was a system that
5 they set up where they send funds that go to -- where do
6 we send it anyway? We certainly don't send it to
7 Lifeline.

8 Yes, ma'am.

9 **MS. HARVEY:** It goes to the general revenue
10 fund. Tier-2 was set up as an escalation issue, if you
11 will. Tier-2 only kicks in if AT&T has failed at the
12 aggregate level and paid monies to CLECs for three
13 months, so it's a more egregious failure. It means that
14 it has happened for three months, and I believe it's in
15 the fourth-month they pay penalties at the Tier-2 level,
16 and that fund, those monies go to the general refund
17 fund.

18 **CHAIRMAN CARTER:** But they pay the CLEC first
19 and they pay the Tier-2.

20 **MS. HARVEY:** They only pay Tier-2 if they have
21 failed the measure at the aggregate level for three
22 months, so it's an egregious failure.

23 **CHAIRMAN CARTER:** It's not in addition to.

24 **MS. HARVEY:** It is in addition to. They pay
25 Tier-1 directly to CLECs.

1 **CHAIRMAN CARTER:** I'm sorry, I wasn't very
2 artful in my question, but that's really what I was
3 asking you.

4 **MS. HARVEY:** They pay Tier-1 payments to the
5 CLECs whenever they fail the measure for Tier-1.

6 **CHAIRMAN CARTER:** And then if it's more than
7 three months, then they pay it into Tier-2 and we send
8 it to general revenue.

9 **MS. HARVEY:** That's correct.

10 **MR. FEIL:** And, if I may, Mr. Chairman, the
11 metrics being measured for Tier-1 and Tier-2 are not
12 parallel in all cases. There are some metrics that you
13 pay Tier-2 on that do you not pay Tier-1 on and vice
14 versa.

15 **CHAIRMAN CARTER:** Okay.

16 **MR. FEIL:** It's complicated. That's why we
17 have these workshops.

18 **CHAIRMAN CARTER:** Well, let's keep it at the
19 pedestrian level for right now.

20 **MS. HARVEY:** Can I just clarify one more
21 thing?

22 **CHAIRMAN CARTER:** Yes, ma'am.

23 **MS. HARVEY:** In terms of the time line that
24 Commissioner Edgar had asked about earlier, we are in a
25 six-month -- well, we are in an annual review cycle

1 where we are looking at the performance assessment plan
2 for AT&T, and we have had one workshop already which was
3 a two-day workshop where we went over half of the plan.
4 We are going over the other half of the plan Wednesday
5 and Thursday of this week.

6 As Mr. Hallenstein mentioned, we will have
7 some take-aways, and then we will work -- this is a very
8 collaborative process where all the CLECs and AT&T and
9 staff work together collaboratively and go through
10 issue-by-issue the various points that each of the
11 parties have and we work on reaching a settlement on
12 each of those issues among the parties. And then once
13 we get through the issues, we would bring you back,
14 bring back to the Commission a proposal that hopefully
15 is stipulated by all the parties in terms of agreeing to
16 the things that we have collaboratively agreed to.

17 **CHAIRMAN CARTER:** Here's my concern is that we
18 have gone over the last year -- I know, Commissioners,
19 we have gone through a process where we have streamlined
20 the rule in terms of telecommunications because there is
21 a level playing field in terms of the competition. And
22 this seems to me, this Tier-2 seems to fall -- go right
23 in the face against that.

24 If we are saying that we are streamlining the
25 rules because the Legislature has already given

1 different requirements so a lot of our rules that we had
2 in place don't -- we still have our quality of service
3 rules, but the other rules they are not pertinent
4 anymore because there's a more competitive environment,
5 then we go through this process and then we get here
6 with the Tier-2, and that's something that I think Mr.
7 Hatch is right, it is a competitive disadvantage. And
8 if that's the case and we want to spur competition,
9 either we should have it for all of the companies or we
10 should have it for none the companies.

11 When you consider the rules -- look at the
12 rules that we have been doing. We have been going
13 through this process all year of revising the rules. We
14 have just -- how many have we even -- probably, if I had
15 to venture a guess it's probably about 25 or so, is that
16 right, of the rules that we have revised for
17 telecommunications because of the competitive
18 environment.

19 **MS. HARVEY:** Yes. We were looking at the
20 rules for the retail service quality, and we are talking
21 about the wholesale service quality at this point. And
22 when we went through the retail service rules, AT&T and
23 the ILECs said that those did not affect the wholesale
24 side.

25 **CHAIRMAN CARTER:** Commissioner Skop.

1 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

2 I also feel it's important to level the
3 playing field and to promote fair and efficient
4 competition within the telecommunications segment, but I
5 do have some questions for Mr. Hatch. I know that some
6 of the intervenors or other parties in this matter have
7 rendered, you know, assertions regarding the AT&T
8 proposal, and I would like to get AT&T to comment in
9 response to that.

10 Specifically, on Page 5 of the staff
11 recommendation, CompSouth asserted that AT&T is
12 essentially asking the Commission to sacrifice
13 competitive services for Florida consumers and
14 businesses in exchange for a one-time payment to a
15 worthy cause, and further asserted that the proposed
16 \$250,000 one-time contribution offered as an alternative
17 is insignificant compared to what AT&T has paid
18 annually.

19 And to that it looks on Page 4 that AT&T has
20 paid over 400,000 in Tier-2 payments in 2009-to-date,
21 and then over the, I guess, past couple of years, you
22 know, it's estimated that it be 6 million over future
23 years. So I guess I would like to get AT&T's response
24 to CompSouth's position recognizing that, you know, it
25 is important to remove barriers and competitive

1 disadvantages to promote competition, but, you know, it
2 seems to be -- I would like to just get your take on
3 that.

4 **MR. HATCH:** With respect to the numbers that
5 CompSouth is using, they have run a new -- it appears as
6 though, and they can speak to it their own numbers, but
7 it appears as though they have run a numerical average
8 that includes the anomaly, what we call an anomaly which
9 was the August 2008 software failure. So if you back
10 that out, and I believe in their response to the motion
11 they didn't make adjustments for other things, and
12 they -- for the 2008 release or for stuff that would
13 tend to underestimate. But, regardless, you look at the
14 trend of those payments, you are not looking at millions
15 of dollars over the next few years. You are looking at
16 a constant trend downward with the prospect of no
17 software failures because we don't plan anymore major
18 software releases, so you can't have a failure like
19 there was for the April 2008 release.

20 So the numbers that you see on their exhibit
21 are a little bit low because they don't have the benefit
22 of the latest payment that we have made for Tier-2. I
23 think it brings it up around \$400,000.

24 **COMMISSIONER SKOP:** Okay. So if I've heard
25 you correctly, I guess you're asserting that AT&T has

1 taken corrective action to remedy some of the problems
2 with what, I believe, is the OSS releases.

3 **MR. HATCH:** Absolutely.

4 **COMMISSIONER SKOP:** On a forward-going basis,
5 and I know that that has been a continuing issue or
6 concern from the CLECs to the extent that, you know, it
7 causes them harm in the wholesale market when their
8 orders aren't getting processed as deemed to be agreed
9 to as a result of the SEEM safeguard provisions.

10 But just one further comment --

11 **MR. HATCH:** And if you look at the numbers and
12 you trend forward, within the next couple of years there
13 may not be \$250,000 in SEEMs payments.

14 **COMMISSIONER SKOP:** How would maintaining
15 Tier-1 -- would maintaining Tier-1 adequately protect
16 your wholesale customers?

17 **MR. HATCH:** If you accept the premise that
18 Tier-1 payments are necessary for us to ensure wholesale
19 performance, then I would say it would certainly enhance
20 that probability. But what belies that notion is the
21 fact that there are no Tier-1 or Tier-2 payments with
22 either Verizon or CenturyLink, and they are providing
23 wholesale service to CLEC customers, as well. So if you
24 believe penalties are essential for market opening
25 opportunities and consistently maintaining your market

1 openness, then why do they have competition? Why isn't
2 their market closed, effectively, if you will?

3 **COMMISSIONER SKOP:** Right.

4 **MR. HATCH:** And I will tell you that has been
5 no hue and cry. Certainly there has been no parade of
6 CLECs to the Commission yelling and screaming, torches
7 and pitchforks in the street about either Verizon's or
8 CenturyLink's performance.

9 **COMMISSIONER SKOP:** Okay. And just one
10 follow-up question. On Page 5, looking at CompSouth's
11 and FCTA's Response to the AT&T Motion, Item 5, does the
12 SEEMs requirement essentially result from the fact that,
13 you know, AT&T is the only ILEC in the state that's a
14 legacy Regional Bell? Is that in part or is that
15 factual?

16 **MR. HATCH:** I think that is correct, but I
17 think you have to understand the context in which it was
18 done. 271 was a process that was separate, but
19 overlying on top of the 251/252 requirements in the
20 Federal Telecom Act. It essentially required that RBHCs
21 ensure that they did these other things that were
22 essentially similar, if not the same thing that was
23 required for all carriers under 251.

24 Now, in order to get the ability to have
25 interLATA, which is essentially long distance calling

1 authority, the ability to do that, you had to jump
2 through the 271 hoops. And there was a checklist and
3 you had to go through and check the box on every item in
4 that checklist. Nowhere in the checklist does it say
5 you have to have penalties as part of this process.

6 Now, we volunteered to create or to --
7 essentially volunteered to subject ourselves to this
8 penalty process as additional insurance or assurance, if
9 you will, that we would honor our commitments under 251,
10 252, and 271. We have done that. The FCC's compliance
11 audits have shown that we have done that. So there is
12 no, I don't think, any serious argument that 271
13 requires any kind of penalty payments, either Tier-1 or
14 Tier-2.

15 **COMMISSIONER SKOP:** Thank you. Just one
16 follow-up question. One question to staff, Mr. Chair,
17 and I will be done.

18 On Page 6 of the staff recommendation, FCTA
19 alleges that Tier-2 provides incentives for AT&T not to
20 unfairly disadvantage competitors in situations where
21 market participants are forced to interact.

22 How would you rebut that assertion?

23 **MR. HATCH:** I would say two things. First,
24 the Tier-1 is the direct tangible benefit that the CLECs
25 get if we fail any of our performance measures, and we

1 are not that talking about eliminating any of that.

2 Second, it goes back to the original premise
3 if penalties are required in order to ensure
4 performance, why don't Verizon and CenturyLink have the
5 same penalty structures to ensure their performance?
6 They perform, yet there is no penalties that require
7 them to perform. They perform because they have a duty
8 to do so and they comply with the law, the same as we
9 do.

10 **COMMISSIONER SKOP:** So, essentially, as it
11 currently functions, Tier-2 is essentially a financial
12 penalty that kicks in on top of existing payments to the
13 CLECs as a result of repetitive nonperformance or --

14 **MR. HATCH:** That is correct. And we
15 volunteered to do that to provide just that
16 additional -- if you go back to the 271 process, you are
17 looking forward and you have, you know, AT&T, BellSouth
18 then saying we are going to do this. Now, you have to
19 take it on faith that we are going to do that when we
20 tell you we are going to do that. So we provided that
21 assurance to say and if we don't, here is what we will
22 subject ourselves to. Well, we are past that now. We
23 have done all of that, so we don't need the penalty
24 anymore.

25 **COMMISSIONER SKOP:** Thank you. And then,

1 Mr. Chair, just one question for staff.

2 **CHAIRMAN CARTER:** You're recognized.

3 **COMMISSIONER SKOP:** On Page 8, staff states in
4 the middle of the page that staff also agrees with
5 CompSouth that AT&T has paid Tier-1 and Tier-2 payments
6 every month since receiving 271 authorization in Florida
7 in 2002. Staff goes on to make the assertion that these
8 payments indicate that discriminatory performance does
9 exist. And then finally, staff, you know, I guess
10 someone concludes that if Tier-2 were eliminated then
11 AT&T's incentive to maintain and approve wholesale
12 performance may be compromised.

13 Could staff elaborate on that a little bit in
14 light of Mr. Hatch's comments? I think that, you know,
15 obviously there has been some problems in the OSS
16 releases that adversely impacted the CLECs and they have
17 received their payments and payments have gone into the
18 general fund under Tier-2. But what is meant by
19 wholesale performance may be compromised? Isn't there
20 sufficient provisions under Tier-1 to ensure, or can you
21 elaborate on that a little bit.

22 **MR. HALLENSTEIN:** Commissioner Skop, there's
23 various measures in the performance measurement plan.
24 Some are liable for pay in Tier-1, some are liable to
25 pay Tier-2, some both. In this case, there has been --

1 as staff indicated, there has been payments every month
2 since 271 authorization. There has been a measure of
3 some sort or multiple measures that have failed over
4 three consecutive months since inception of the
5 performance measurement plan, or the SEEM plan to, for
6 lack of a better word, tip off SEEM payments. So with
7 that alone that's an indication of failures, and they
8 have had three months to correct the process.

9 It could be one measure. Let me give you an
10 example. It could be ordering, how long it takes to
11 provision a line or a service. If they fail one
12 particular month, they will pay the CLECs; for three
13 consecutive months it's payable to CLECs and to the
14 state of Florida. That is one measure that could be
15 paid over time. It could be corrected, and what we are
16 saying here is that all the measures, some or all the
17 measures there are multiple instances of Tier-2 payments
18 that indicate every single month.

19 **COMMISSIONER SKOP:** Okay. So I guess staff's
20 concern with the AT&T proposal is that granting the
21 proposal is premature to the extent that a comprehensive
22 analysis and understanding of the interactions of the
23 provisions within the performance assessment plan is
24 more appropriate than acting ad hoc and taking a more
25 fair and balanced approach to looking at the totality as

1 opposed to making any unilateral changes, is that
2 generally correct?

3 **MS. HARVEY:** That's exactly correct,
4 Commissioner. We believe that the plan-needs to be
5 looked at in total. That if you are going to eliminate
6 Tier-2, then you need to look at Tier-1 and make sure
7 that it's appropriately -- that there is still incentive
8 there in terms of the dollar penalties that are paid
9 directly to the CLECs. You need to take that into
10 account if you're going to eliminate Tier-2.

11 **COMMISSIONER SKOP:** Okay. So if the current
12 performance assessment plan did not have some provisions
13 that spoke to payments to Tier-1 and Tier-2
14 concurrently, and were only Tier-1 issues and Tier-2
15 issues, then staff would not have this concern basically
16 because Tier-2 doesn't really do anything to --

17 **MS. HARVEY:** I'm not sure I understand your
18 question.

19 **COMMISSIONER SKOP:** As I understand it -- let
20 me just reframe. On the performance assessment plan
21 there seems to be provisions that speak to Tier-1
22 payments, there seem to be other provisions that speak
23 solely to Tier-2 payments, and there seem to be hybrid
24 provisions that require payment in Tier-1 and to Tier-2
25 that have all intended effects that are beyond the scope

1 of my discussion because I don't want to get into that.

2 If the performance incentive plan --
3 assessment plan did not have those provisions that
4 require a payment to Tier-1 and Tier-2, you know, as a
5 hybrid, would staff have the same concern of just doing
6 away with Tier-2 to the extent that the CLECs are
7 adequately protected?

8 **MR. HALLENSTEIN:** Let me see if I could
9 summarize this. I think what's happening here is what
10 we are doing -- by removing Tier-2 today, eliminating
11 Tier-2 today you're effectively removing a piece of the
12 puzzle in this whole review process, a huge piece of the
13 puzzle where parties are currently working negotiations
14 and staff workshops, and I think it's not as simple as
15 just looking, reviewing the, you know, Lifeline fund on
16 top of Tier-2 elimination. And we're fully supportive
17 of Lifeline, we just don't believe this is the arena to
18 bring it up.

19 **COMMISSIONER SKOP:** Okay. All right. Thank
20 you. And I'll just yield to the Chair. Thank you.

21 **CHAIRMAN CARTER:** Commissioners, my problem
22 with that is -- I mean, I can see where Tier-1 may be
23 there, although Tier-1 and Tier-2 for one company versus
24 no other companies does bring about an anti-competitive
25 bias. But, nevertheless, let's just look at this. I

1 think that the Tier-2 -- I just don't see what benefit
2 that does for the marketplace. And I think that, you
3 know, like I say, either all of the companies should be
4 regulated or none of them.

5 But, nevertheless, let's just say that we keep
6 Tier-1 in place. I still don't see Tier-2 being
7 there -- Tier-1 and Tier-2. I started to say T-1 line
8 -- Tier-1 would still be in place, but I don't think
9 that Tier-2 gets us anything, and particularly when we
10 just finished over the last year going through the
11 process of determining these anti-competitive rules.

12 And if we are saying that we are going to move
13 forward with making the marketplace far more
14 competitive, to bring about new innovations, to bring
15 about new opportunities, a new pricing process for folk
16 to pay for service versus paying for other kinds of
17 things, I still have heartburn with Tier-2 because I
18 don't think it gets us anywhere. I think that we have
19 those provisions so if we do get to it, and looking at
20 what is on Tier-1, maybe we should look at that in terms
21 of how the other companies function. But I've got some
22 real heartburn with Tier-2, because if we are doing
23 Tier-2 and we are saying, well, the good thing is that
24 we are taking money and putting it into the general
25 revenue, that is not doing anything to spur competition,

1 that is not doing anything to spur innovation, that is
2 not doing anything to say that we support the
3 legislative perspective in terms of how we view the
4 competitive environment.

5 I mean, the Legislature has been very clear
6 about that in terms of how we regulate
7 telecommunications. In fact, it has been so clear to
8 where we have very minimal regulatory authority at this
9 point in time. So that's why I have the heartburn on
10 Tier-2. We could probably -- I mean, I can think that
11 we could probably leave Tier-1 in place, but I do have a
12 real problem with the Tier-2. And I haven't heard
13 anything yet from either staff or the other companies to
14 say why we should have this competitive disadvantage for
15 this company.

16 Commissioner Skop.

17 **COMMISSIONER SKOP:** Thank you.

18 Just a follow-up question to staff. I mean,
19 again, I'm trying to ascertain in light of the
20 competitive changes whether they be right or wrong that
21 have been made, you know, to ensure more fair
22 competition, what would necessitate the need for Tier-2
23 and get a better appreciation and understanding of that
24 if it is still warranted. I don't know.

25 But how long would it take staff to conduct

1 this? I think you mentioned the workshop is tomorrow or
2 sometime this week, and how long would it take to get a
3 better handle on addressing the issues that have arisen
4 and could the same result that AT&T is advocating fall
5 out of that ultimately through just taking a more
6 seasoned approach towards this.

7 **MS. HARVEY:** That's the staff's intent is that
8 it would all be addressed together, jointly by all the
9 parties. Timeline-wise, we have the workshop and then
10 we work through all the different issues. We should
11 complete the review by the early part of 2010.

12 **COMMISSIONER SKOP:** Okay. And then, Mr.
13 Chair, if it would be helpful, I guess I have asked some
14 questions, and I think Commissioner Edgar and yourself,
15 you know, I would like to probably hear from my
16 colleagues, Commissioner Klement and Commissioner
17 Argenziano, to see, you know, if anyone has any hard
18 feelings one way or another on this.

19 It is certainly a worthy discussion to have,
20 and I'm not sure what the best approach is. I mean, I
21 do want to ensure that we have a level playing field and
22 that we have fair and efficient competition; but, you
23 know, I see what AT&T's argument is that you have got
24 competitors that it competes with like Verizon and
25 others that are offering wholesale services that don't

1 have the same constraints on them that AT&T has
2 self-imposed in some part on Tier-2. And I think Tier-1
3 is somewhat mandated by its legacy monopoly history
4 under 271, but, you know, I would just like to hear what
5 my colleagues have to say.

6 **CHAIRMAN CARTER:** Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** It would be good to
8 hear --

9 **CHAIRMAN CARTER:** The cable?

10 **MR. KONUCH:** Mr. Chairman, the distinction to
11 be made here between the Tier-2 SEEM penalties and what
12 we did with ILEC deregulation this year, the difference
13 is retail versus wholesale. We deregulated lots of
14 retail regulation this past year. I mean, you saw me in
15 here quite a bit talking about the few rules involved in
16 retail regulation that affected competition. And there
17 were maybe 60 or so provisions that they had in ILEC
18 deregulation, and there were maybe five or six that
19 affected the level playing field. And when those came
20 up you saw me kind of waving and shouting and saying,
21 hey, these affect the level playing field. You have to
22 keep these.

23 When it comes to wholesale, all of the
24 regulations affect level playing field. That is all
25 they are about. This idea that somehow not having

1 Tier-2 is a competitive disadvantage to AT&T is just --
2 respectfully, it's incorrect, and I'll tell you why.

3 **CHAIRMAN CARTER:** Let me tell you why I
4 disagree with you on that. Because you guys aren't over
5 here saying we need to have the same thing for Verizon
6 and for CenturyLink. You are not saying that. So why
7 is it?

8 **MR. FEIL:** We would advocate that given the
9 opportunity, but one of the other things I want to point
10 out is --

11 **CHAIRMAN CARTER:** Wait, wait, wait, wait. I
12 want to -- let him complete his thought, but that made
13 me think of something. What I'm saying is that, you
14 know, we talk about business, you know, the business in
15 America is business. We talk about business and all
16 like that, and we talk about creating a competitive
17 environment, a competitive business environment.
18 Everybody wants there to be a competitive business
19 environment except they want you to regulate their
20 competitors. You know, it's like that old adage they
21 have in Congress, "I won't tax you, don't tax me, tax
22 that fellow behind the tree."

23 I'm just saying that a lot of times we have
24 rhetoric here at the Commission about moving forward and
25 all like that, but really the rhetoric about a level

1 playing field, the rhetoric about a competitive
2 environment, you know, seem to be falling on deaf ears.
3 When you have competitors follow -- I know that Comcast
4 is, what, the number two phone company in the country.
5 So then you've got Verizon. You know, I have seen you
6 guy's commercials and all like that, but by the same
7 token when we are talking about having a competitive
8 environment and a level playing field is that
9 government, particularly when -- and you guys are
10 talking, but you need to understand what we have done
11 here at the Commission and what the Legislature has
12 done. They have taken most of the regulation away. You
13 know, so you guys are saying, okay, what we couldn't get
14 in the Legislature we will go to the PSC and see if they
15 can keep that in place, and that's falling on deaf ears
16 with me.

17 **MR. KONUCH:** If I could respond, and I was
18 very actively involved in working on that legislation at
19 the capital this past year. A very firm distinction was
20 made in that legislation between wholesale and retail
21 services, and it specifically carved out a role for this
22 Commission to ensure that they still had a role with
23 wholesale services.

24 Now, Comcast may now be one of the larger
25 telecommunications VoIP providers, phone providers in

1 the country, however, last year, and this was not that
2 long ago, last year there was a big problem with
3 something that AT&T unilaterally did. So we have
4 built -- my clients have built networks all around the
5 state so that we have the minimum amount of interaction
6 with AT&T and Verizon. But we still have to order
7 interconnection trunks from them, we still have to make
8 an order. When we win a customer from them, we still
9 have to say, yes, we want this number ported on such and
10 such a date.

11 What happened last year, and this was just
12 last year, the software rollout made it so that when we
13 ordered a number or an interconnection trunk we didn't
14 get it. It just fell into the ether somewhere, and we
15 lost thousands and thousands of orders, and people's
16 businesses just came to a halt because there was nothing
17 we could do about it. The issue was totally on AT&T's
18 side.

19 So what Tracy or what Mr. Hatch calls an
20 anomaly we call a catastrophe. And we have spent
21 billions of dollars building these networks, yet it
22 didn't protect us against this. So the fact, and also
23 as far as retail is concerned, it's not just rhetoric
24 there is retail competition because I'm competing with
25 AT&T, and Verizon, and wireless, and the CLECs, so the

1 customer can decide to go with Comcast, or BrightHouse,
2 or Cox, or AT&T, or whomever. But when Comcast, or Cox,
3 or Brighthouse, you know, my clients, when they have to
4 get an interconnection trunk or order the phone number
5 for a customer that we have won, we only have one source
6 to go to for that and that's the incumbent.

7 So that is why these things still exist. And
8 I would only say that if you want to leave a legacy of
9 ensuring that outreach is funded, this is not the way to
10 do it. Because the \$250,000 is just -- it's a discount
11 on the cash flows that, you know, the Commission or the
12 general treasury could be getting. So just on the face
13 of it, it's simply not a good deal.

14 I mean, we used the word surprise when we saw
15 this. The reason we were surprised is because there has
16 been ongoing debates about this this entire year, and it
17 was teed up in a number of workshops. And, you know,
18 this came out the next day to try to link Lifeline and
19 these penalties. But the fact of the matter is that
20 once this \$250,000 is gone, there's no new money coming
21 in to replace it, so it's --

22 **CHAIRMAN CARTER:** Let me do this -- I'll be
23 right with you, Commissioner Klement.

24 But in the context of the -- I think with no
25 disrespect intended to anyone, I think that the word

1 surprise rings hallow. This Commission, with the
2 cooperation of the Attorney General's Office, Office of
3 Public Counsel, as well as the companies found an
4 opportunity to have funds that were available from a
5 penalty rather than have those funds go to the general
6 fund. Basically \$250,000 on a \$60 billion budget for
7 the state of Florida. We said let's do some good. This
8 Commission is committed to Lifeline. We said let's do
9 some good, Commissioners. And they said, well, we will
10 give you \$50,000.

11 The Commissioners asked the Attorney General's
12 Office, the Office of Public Counsel, and all the
13 intervenors got together and said why don't we send half
14 of the money -- instead of 250 to the general fund,
15 let's have half of that money available to provide
16 opportunities for Lifeline in the area, the geographical
17 areas where the people were affected, which was
18 Verizon's area, if I'm correct on that.

19 The other thing is that when I'm talking about
20 Tier-2, I'm not saying that -- and please does discredit
21 the Lifeline program by saying that if you are doing
22 away with -- I think that you guys are mixing your
23 argument there. Lifeline is a very worthwhile program.
24 The Tier-2 to me has more to deal with the competitive
25 environment for the businesses, and I think that if AT&T

1 were to pull a fast one on the business, then the
2 business -- they do have redress in the courtrooms.

3 **MR. FEIL:** I will just say, Mr. Chairman, to
4 be clear, we don't have an objection to Lifeline
5 outreach.

6 **CHAIRMAN CARTER:** That's what I've been
7 hearing all afternoon.

8 **MR. FEIL:** We don't have an objection to
9 having it funded out of Tier-2 payments. Our concern is
10 eliminating Tier-2 permanently in exchange for a
11 one-time Lifeline outreach.

12 **CHAIRMAN CARTER:** Okay. Let me address that.
13 Because I was saying eliminate Tier-2 regardless of
14 Lifeline. I'm saying eliminate it because of the
15 competitive environment. Like I say, you guys were in
16 the Legislature last year when they passed the bill in
17 terms of reducing the constraints, the regulatory
18 constraints on these companies.

19 **MR. FEIL:** On retail.

20 **CHAIRMAN CARTER:** The other thing, what we
21 have done -- and I think that a lot of times we get over
22 here at the Commission and we turn on inside baseball,
23 and I think it is a distinction without a difference.
24 Is that if we are going to have a competitive
25 environment, then all of the major players need to

1 compete on the same -- how is it going to be that we've
2 got a baseball team, Commissioner Argenziano, you know,
3 she hits left-handed, so what we have got to do is we
4 have got to put a weight on her arm so she won't be able
5 to hit as many home runs as Commissioner Edgar. But
6 we're playing in the same game. That's a disadvantage.
7 That is a competitive disadvantage. I wanted to say
8 that before I forgot it.

9 Jerry.

10 **MR. HENDRIX:** Good afternoon, Jerry Hendrix
11 with AT&T.

12 As Mr. Hatch mentioned, we initially asked for
13 the elimination of Tier-2 back in July. We filed
14 quarterly reports giving an update on our service fund
15 for our Lifeline outreach. We have truly exhausted that
16 fund, and we were looking for a way to infuse that fund
17 with additional cash.

18 We made an attempt to negotiate with the
19 CompSouth members. They simply did not respond to our
20 offer. That offer to negotiate was, I think, the latter
21 part of September where we laid out the offer and then
22 we made the filing after we got no response a couple of
23 weeks later from the CompSouth members.

24 So, we want parity among the carriers. As Mr.
25 Hatch mentioned, we are the only ones paying Tier-1 and

1 Tier-2. We believe that we have satisfied the
2 obligations that we have under law, and we want to
3 infuse the Lifeline fund because we have done a good job
4 on our outreach for this offering, and there are many
5 other people throughout this state that could actually
6 benefit. And we believe that this is one tool that you
7 could use to further the penetration of Lifeline to
8 those members that need it.

9 Thank you.

10 **CHAIRMAN CARTER:** Thank you.

11 Commissioner Klement, you're recognized.

12 **COMMISSIONER KLEMENT:** Thank you, Mr.

13 Chairman.

14 I think that I'm probably on a different page
15 than you are. I'm strongly persuaded by staff's
16 arguments or their recommendations regarding the
17 incentives that Tier-2 provides. And also the upcoming
18 workshop just tomorrow and the next day to consider the
19 performance assessment plans, and -- I don't know. And
20 I'm also concerned about our -- aware of the arguments
21 that -- the difference between wholesale and retail, and
22 you have to consider those, too. So I'm still
23 unpersuaded totally, but staff's arguments are strong.

24 **CHAIRMAN CARTER:** Well, Commissioners, we can
25 do whatever you wish to do. But my thing about it is

1 that we need to not do it in a vacuum. We need to do it
2 in the context of what the Legislature has already
3 prescribed for us as an agency and what we have already
4 done historically as an agency. So I think that in the
5 context of that, we need to -- if we want to continue
6 that, let's don't hide behind the Legislature, let's
7 just say we decided we wanted to do this,
8 notwithstanding what the legislative direction was.

9 And, I mean, they have taken a tremendous
10 amount of authority from this agency for
11 telecommunications. Commissioner Edgar used to be on
12 the Joint Board. There is a tremendous amount of
13 authority that used to be with us that is no longer with
14 us, and that's because the phenomena of so many people
15 going from landlines to wireless. Even in poor
16 communities like Gretna, is that we have people that
17 have wireless. And Mr. McCabe was here earlier this
18 morning, he will tell you about TDS in terms of how they
19 are losing their customers that have the actual
20 landlines to wireless.

21 So if we are going to deal with the
22 competitive environment, then we need to deal with the
23 competitive environment. But if we say we want to
24 continue regulation in a vacuum, then we need to do
25 that. But I'm open to wherever you guys want to go. I

1 just personally feel, and I really enjoy Commissioner
2 Argenziano, because she will tell you, hey, whether you
3 agree with me or not, this is how I feel.

4 So whether you agree with me or not, this is
5 how I feel. I feel that these Tier-2 payments are
6 antithetical to the legislative direction that we
7 received as well as they are anticompetitive in the
8 environment that we find ourselves in today.

9 Commissioner Argenziano, you're recognized.

10 **COMMISSIONER ARGENZIANO:** Just to staff. To
11 the bill that deregulated basically last year, how much
12 of the quality of service did it deregulate?

13 **MS. HARVEY:** I can't answer that. I work with
14 the wholesale quality of service and you need to talk to
15 someone that deals with retail quality of service.

16 **COMMISSIONER ARGENZIANO:** Okay. I think she's
17 up.

18 **MS. SALAK:** Commissioner, they took away our
19 authority to do quality of service for nonbasic
20 services. And in that they changed the definition of
21 basic and nonbasic to be more inclusive to include any
22 package that included -- say you had a landline and you
23 had caller ID, or any kind of ancillary service, or if
24 you had Internet, or if you had cable, then that all
25 became nonbasic. So they actually -- and there is a

1 high percentage of consumers that have nonbasic
2 packages, so I can tell you that they took retail
3 quality of service away for a high percentage of the
4 retail customers.

5 **COMMISSIONER ARGENZIANO:** How does that
6 pertain to the Tier-2 issue?

7 **MS. SALAK:** I will tell that you some of
8 the -- and I always hesitate to venture into this, but
9 some of the measures are at parity, and from the sense
10 that if quality of service on the retail side declines,
11 then it can also decline on the wholesale side. That's
12 not to say that any of our -- none of our wholesale
13 authority was affected last year, I will tell you. But
14 under the plan it would impact some of the measures and
15 how things are done. And so actually they have a better
16 chance of meeting, meeting the criteria if -- if retail
17 quality of service declines, because of our lack of
18 oversight. If, and that is a big if.

19 **COMMISSIONER ARGENZIANO:** Okay. So then we
20 still have control over quality of service regarding
21 wholesale.

22 **MR. FEIL:** That's correct.

23 **MS. SALAK:** If you were to deem -- we have an
24 order that has this plan underneath it, and this is all
25 done by Commission order, that is true. And that, yes,

1 was associated with 271. I think that if you were to
2 see them -- I think that our stronger statutes, and I'm
3 not an attorney, so I hesitate to venture out, but I
4 will anyway, that would actually be more things that are
5 barriers to competition, anticompetitive behavior if
6 they were not providing good service or providing
7 ordering services and other requirements you might
8 consider it more anticompetitive behavior. And those
9 would be the statutes that we probably would be under if
10 we did not have this order and this plan set up the way
11 it is.

12 **MR. HATCH:** Commissioner Argenziano, if I may
13 help clarify a little bit. We believe that the total
14 number of basic customers as redefined by the
15 Legislature, the number I think is still being defined.
16 We believe it is less than 100,000 access lines, so it
17 is a relatively small number. To your second point
18 about wholesale quality of service requirements, our
19 federal obligation and hence our state obligation is
20 derived from federal authority. Our wholesale
21 performance is tied directly to our retail performance,
22 so whatever we do on our retail side, that's what we
23 must do on the wholesale side for the CLECs.

24 **COMMISSIONER ARGENZIANO:** But isn't it odd
25 that the Legislature would not remove the oversight from

1 the PSC for wholesale, then?

2 **MR. HATCH:** I can address that. There is a
3 complicated process because there is a whole bunch of
4 wholesale side that stems from the Federal Telecom Act.
5 It has been delegated to the state, and so it becomes a
6 little more cumbersome to go directly and speak directly
7 to the wholesale side. That has not yet been done.

8 **COMMISSIONER ARGENZIANO:** And this is a tough
9 one, because I just do not believe you deregulate
10 quality of service, okay, that's just my personal
11 opinion, because of obviously the ramifications that
12 could occur. But I also understand, Mr. Chair, what you
13 are talking about. It's not fair for one company, and
14 is there a distinction of why there is just one company
15 that is subject to Tier-2? And then I would like to
16 hear, because I know you have been wanting to saying
17 something and I would like to hear that.

18 **MR. FEIL:** Please.

19 **COMMISSIONER ARGENZIANO:** But from staff is
20 there a distinction as to why the other companies are
21 not -- I understand it was a voluntary thing, but, you
22 know, you can unvolunteer.

23 **MS. SALAK:** In order to get a positive
24 recommendation from this Commission under 271, and our
25 recommendation went to the FCC for them to determine

1 whether or not they were going to give them -- pass them
2 under 271, as part of that that is when they agreed to
3 do all this. I will tell you that it's my understanding
4 that the FCC still relies on the states to monitor all
5 of this and make sure that everything is working well in
6 the market, and this has been our tool to do that.

7 As far as the others, we have always
8 recognized that there was a disparity, that the others
9 didn't have it, but I will tell you the most intense
10 competition was happening in AT&T from the very start.
11 That's where a plan was really needed. That's where
12 most the competitors were migrating to. We have seen,
13 of course, other competition in other areas. It's
14 not -- I will say in the Verizon territory, for example,
15 most of your -- the majority of the competition in that
16 market is from Bright House. And obviously, they are a
17 little different since they are VoIP and they have other
18 items. CenturyLink, Embarq/CenturyLink has a lot more
19 rural areas and so it's not quite as intense. You don't
20 have as many bigger markets. But with all that said, we
21 have always said if the CLECs came to us and asked for
22 those payments, that they really needed them, that we
23 would certainly consider the -- obviously, we would
24 consider the petition, but we didn't think it was our
25 place, unless the CLECs were complaining or willing to

1 give us a petition to do that for staff to unilaterally
2 try to get the penalties in, and we have never done
3 that. And I don't know if Ms. Harvey has anything to
4 add or not.

5 **COMMISSIONER ARGENZIANO:** Well, is there a
6 way -- I'm not advocating this, I'm just wondering -- to
7 include the other companies? When you talk about a
8 level playing field, either you are going to include
9 them or you are going to stop it for everybody.

10 **MS. SALAK:** There have always been
11 stipulations wherein those two -- and Ms. Harvey can
12 jump in at any time -- that they have come up with plans
13 in other states and usually we come to the Commission
14 and recommend that we adopt those plans, and under those
15 other plans they don't have payments, and that's what
16 has been done. It's not to say that staff doesn't
17 monitor it, follows up on it, asks questions. We see
18 increases in this measure, what's going on. So we
19 actively monitor it, and we would have always -- it was
20 always our intention that if we -- through our
21 monitoring, if we couldn't get things to look better,
22 that we would come to the Commission and share that
23 information with you.

24 **COMMISSIONER ARGENZIANO:** Could I ask a
25 question? What would the harm be in waiting for the

1 workshop, but putting -- using the escrow to safeguard
2 to see whatever the outcome may be. Would there be harm
3 in doing that?

4 **CHAIRMAN CARTER:** I don't see any.

5 Staff, do you see any?

6 **MS. HARVEY:** No, I don't think there would be
7 any harm in that. And I will add that in every state
8 where Tier-2 penalties have been eliminated it has
9 always been through a collaborative process where all
10 the parties have worked together.

11 **COMMISSIONER ARGENZIANO:** And, Mr. Chair, like
12 I said, I am a firm believer in service quality issues.
13 I think to deregulate quality of service is a
14 disservice. I really do. But, however, I firmly also
15 believe, like you do, that what is good for one is good
16 for the other. Otherwise, you can't call it fair.

17 **CHAIRMAN CARTER:** Right.

18 **COMMISSIONER ARGENZIANO:** So, you know, I'm at
19 the point maybe we can let staff proceed with the
20 workshop, but also safeguard as indicated with the
21 escrow account.

22 **MR. HATCH:** Commissioner Argenziano, I'm
23 sorry.

24 **COMMISSIONER ARGENZIANO:** Yes. Mr. Chair, it
25 is up to you. I think both of them need to --

1 **CHAIRMAN CARTER:** Matt, you go first.

2 **MR. FEIL:** Mr. Chairman, if I may, please.

3 With respect to the offer from AT&T to escrow
4 the Tier-2 payments, we don't have an objection to that.
5 The main thing we wanted to make sure is that the Tier-2
6 payments stay in place until we could look at the
7 cumulative issues in the SQM docket, including whether
8 or not Tier-1 is an adequate incentive for AT&T to
9 perform. We don't have an objection to escrowing until
10 all the issues in that docket are resolved and we can
11 come back in 120 days or however long it takes. We will
12 do what we can to expedite the process so that we come
13 before you as soon as we can.

14 The other thing that I was going to mention
15 with respect to why is AT&T different, Ms. Salak alluded
16 to this. They are by far the biggest incumbent carrier
17 in the state of Florida. If you look at the markets
18 that they serve, South Florida, Orlando, parts of the
19 Jacksonville area, the only market for Verizon that's of
20 any size is in the Tampa area. For Embarq, parts of
21 Orlando. Again, most of the CLEC carriers are in AT&T
22 territory, that's where most of the competition started,
23 and in aggregate numbers that is most of where it
24 remains.

25 **CHAIRMAN CARTER:** Let me do this before I go

1 to Mr. Hatch. I wanted to hear from cable in terms of
2 the proposal to escrow the Tier-2 payments.

3 **MR. KONUCH:** I haven't specifically spoken to
4 my clients about that, but I doubt that we would have a
5 problem with it. We just want to see the proceeding
6 going forward. We are about 75 to maybe 80 percent of
7 the way through this, and we have been dealing with
8 these issues all along, so I don't think we would have
9 an objection to that at all.

10 **CHAIRMAN CARTER:** Mr. Hatch.

11 **MR. HATCH:** Just to be clear, Commissioner
12 Argenziano, we are not essentially getting rid of any
13 wholesale performance requirements. Those requirements
14 are embedded in federal law as our obligation to provide
15 service at least as equal in quality that we provide to
16 ourselves. So that is not going away. That will not
17 change. So to that extent you can rest assured we are
18 not trying to get rid of any wholesale service quality
19 today, certainly, or in the future for that matter.

20 One thing I think we also need to be clear on
21 is that we are not proposing that you remove any
22 regulatory oversight. That still remains with you under
23 your existing authority. Nor are we getting or
24 proposing that you are removing any authority to
25 penalize us if we have any kind of failure that you deem

1 necessary for penalties. You have existing authority
2 under 364.285 to impose financial penalties on carriers
3 that don't do what they are supposed to do. That will
4 remain in place.

5 All we are asking you to do is to get rid of
6 the automatic upfront penalties that do not follow that
7 process that we voluntarily agreed to in the past that
8 we are unvolunteering for now.

9 **CHAIRMAN CARTER:** Let's do this,
10 Commissioners. I think that there seems to be agreement
11 in the context of escrowing the Tier-2 payments from
12 what I'm hearing from -- I mean, I have told everyone
13 where I'm coming from, but what I am hearing from my
14 colleagues is maybe you want to defer this until staff
15 conducts their --

16 **COMMISSIONER EDGAR:** Mr. Chairman, can I try a
17 motion?

18 **CHAIRMAN CARTER:** You are recognized.

19 **COMMISSIONER EDGAR:** Thank you.

20 **MS. HELTON:** I hate to do this, this is --

21 **CHAIRMAN CARTER:** Oh, no, it's Mary Anne.

22 **MS. HELTON:** If we have an escrow account, if
23 I could suggest that we look at some of the conditions
24 that we set on escrow accounts for water and wastewater
25 companies so that they would be applicable here. So

1 that's all I wanted to say.

2 **CHAIRMAN CARTER:** Oh, that was easy.

3 **MR. HATCH:** Can I suggest that -- I used the
4 term escrow sort of in a much broader sense than a very
5 technical, specific escrow account. Typically with
6 larger carriers historically we have done what is called
7 a corporate undertaking where we just promise to pay and
8 we will make good on the debt, assuming it goes south on
9 us and that we are obligated to pay Tier-2 in any
10 amount.

11 **CHAIRMAN CARTER:** That's consistent with our
12 wastewater issues. That's consistent.

13 Commissioner Edgar, you're recognized for a
14 motion.

15 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
16 I will give it a try, and I know I will have lots of
17 help if I need to fine tune. And that is a good thing.

18 Mr. Chairman, I would offer the motion as this
19 time that we adopt the staff recommendation on Issue
20 6 inclusive of issue -- or on Item 6 inclusive of Issues
21 1 and 2 with the additional condition that the Tier-2
22 payments be held as a corporate undertaking until, as it
23 says in the item, that the staff review comes before us
24 for a decision.

25 **CHAIRMAN CARTER:** That is the motion,

1 Commissioners.

2 **COMMISSIONER ARGENZIANO:** Second.

3 **CHAIRMAN CARTER:** And a second.

4 - Everybody clear on what we are doing? Any
5 debate? Any discussion?

6 Hearing none, all in favor, let it be known by
7 the sign of aye.

8 (Simultaneous vote.)

9 **CHAIRMAN CARTER:** All those opposed, like
10 sign. Show it done.

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 : CERTIFICATE OF REPORTERS
COUNTY OF LEON)

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

WE FURTHER CERTIFY that we are not a relative, employee, attorney or counsel of any of the parties, nor are we a relative or employee of any of the parties' attorneys or counsel connected with the action, nor are we financially interested in the action.

DATED THIS 4th DAY OF JANUARY, 2010.



JANE FAUROT, RPR
Commission Reporter
(850) 413-6732



LINDA BOLES, RPR, CRR
Commission Reporter
(850) 413-6734

SCHEDULE OF AT&T TIER II PAYMENTS, 2005 – 2009 (to date) ¹

<u>Date</u>	<u>Florida Tier II Payment*</u>
Total Tier II 2005	\$1,669,969.00
Total Tier II 2006	\$1,162,992.85
Total Tier II 2007	\$857,624.99
Total Tier II 2008	\$2,092,801.32
Month to Month 2009 (to date)	
1-14-2009	\$ 63,037.00
2-13-2009	\$ 65,573.67
4-16-2009	\$ 53,333.00
4-20-2009	\$ 56,603.67
5-18-2009	\$ 47,909.33
6-16-2009	\$ 29,439.67
7-15-2009	\$ 17,113.54
8-17-2009	\$ 77,311.00
9-14-2009	\$ 18,237.00
9-14-2009 Debit	[\$-36,180.00]
10-6-2009 PSC Waiver Granted	[\$ 35,200.00]
10-15-2009	\$ 11,567.67
11-13-2009	\$15,121.00
11-13-2009 Debit	[\$-52,210.00]
SUB TOTAL	\$384,799.55
	* The above payments reflect numerous recalculations by AT&T; some recalculations change data/payments more than a year after the fact.

Parties/Staff Handout
 Internal Affairs/Agenda
 on 12/15/09
 Item No. 6
 000121A-TP

¹ Updated through November 2009 remittance.