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**Subject:** Docket No. 000121A-TP  
**Attachments:** Comments of Cbeyond Communications, Inc. 02.01.10.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- a. The name, address, telephone number and email for the person responsible for the filing is:

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- b. This filing is made in 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)
- c. The document is filed on behalf of Cbeyond Communications, LLD, Deltacom, Inc. and NuVox Communications, Inc.
- d. The total pages in the document is 8 pages.
- e. The attached document is Comments of Cbeyond Communications, Inc.

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DOCUMENT NUMBER-DATE

00726 FEB-10

FPSC-COMMISSION CLERK

2/1/2010

**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.

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Docket No. 000121A-TP  
Filed: February 1, 2010

**COMMENTS OF CBeyond COMMUNICATIONS, LLC**

Cbeyond Communications, LLC (Cbeyond), hereby submits comments regarding BellSouth Telecommunications, Inc. d/b/a AT&T Florida's (AT&T) proposed revisions to its Service Quality Measurement Plan, Version 5.01 (SQM Plan) and to its Self-Effectuating Enforcement Mechanism Plan, Version 5.02 (SEEM Plan) (collectively, Plans). As grounds therefor, Cbeyond states:

1. In this docket, Staff has conducted a periodic review of the SQM and SEEM Plans adopted by the Commission in 2001. Cbeyond has participated in the various workshops as part of this review process. In addition, Cbeyond has a complaint pending (which is currently in abeyance) regarding the implementation of upcoming AT&T software releases.

2. Cbeyond uses AT&T's operations support systems (OSS) to place orders, receive confirmation of such orders, receive clarifications, receive order rejects, and perform a myriad of functions which are integrally related to its business operations and its ability to serve its customers. The Commission recognized in Order No. PSC-01-1819-FOF-TP (OSS Order) the importance of ensuring that all telecommunications providers are treated fairly to ensure effective competition. The Plans are critical to this goal.

3. Thus, Cbeyond has the following comments and proposals as the Commission reviews the Plans. First, Cbeyond proposes quarterly, rather than monthly, assessments of SEEM penalties, while maintaining monthly reporting on all metrics. Quarterly assessments of SEEM

penalties will help address AT&T's concern about being unfairly penalized due to the determination of parity based on small statistical samples of data.

4. Quarterly assessments of SEEM will also reduce AT&T's costs of administering the SEEM plan because calculations and payments would occur four times a year rather than twelve times a year.

5. The current SQM and SEEM plan statistics capture and penalize AT&T for what the Commission could determine to be willful violations of the law. (*See*, OSS Order at pp. 122-128). The OSS Order states:

We also find that should BellSouth report that it has missed benchmarks set forth in the approved plan, such could be deemed to constitute a prima facie showing that the company has willfully failed to comply with our performance measures....

*Id.* at 127.

6. The current fee schedule increases the fee assessed, per miss, on a monthly basis but stops increasing the fee assessed after six consecutive month misses. Attachment A, Table 1 illustrates the current fee schedule. A trend of failures or repeated failures provides increased evidence that AT&T's actions are willful violations and that the current fee schedule is insufficient to provide AT&T with the necessary incentive to stop its willful violations of the law. As shown in Comcast's January 15<sup>th</sup> filing in this docket, AT&T has missed certain parity metrics for upwards of 25 consecutive months. This obviously means that the current fee schedule is insufficient to incent AT&T to stop its willful violations of the law. To address this fact, the fee, per miss, set forth in the fee schedule should not stop after six months as it currently does but should continue to increase until AT&T eliminates the discriminatory conditions. Cbeyond has provided a proposed schedule in Attachment A, Table 2.

7. Cbeyond also proposes that a payment de-escalation process be implemented. The escalation of payments for consecutive quarters of non-compliant service would be matched quarter for quarter with payment de-escalation for compliant service. For example, if AT&T has three consecutive quarter "misses," it would make payments that escalate from quarter 1 to quarter 3 as shown in Table 2. If, in the next quarter, AT&T service meets the standard, AT&T would make no payment. A payment "indicator" would de-escalate down from quarter 3 to quarter 2. However, if AT&T misses the following quarter, it would make payment at the quarter 2 level of Table 1 because that is where the payment "indicator" presently sits. If AT&T misses again the following month, it would make a payment that escalates back to the quarter 3 level. The payment level will de-escalate back to the original quarter 1 level only upon compliant service sufficient to move the payment "indicator" back to the quarter 1 level. This payment de-escalation process is necessary to ensure that AT&T truly eliminates discriminatory conditions and does not just implement a temporary fix in order to reset the SEEM payment level.

**WHEREFORE**, Cbeyond proposes that the current six-month escalating fee schedule be restructured into quarterly assessments and extended to twelve months as shown in the attached Table 1, and that a payment de-escalation process be implemented for the reasons set forth above.

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**CERTIFICATE OF SERVICE**

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

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s/Vicki Gordon Kaufman  
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**Attachment A**

**Table 1: Current Fee Schedule for Tier 1 per Transaction Fee Determination**

Performance Measures	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
OSS/Pre-Ordering	\$10	\$15	\$20	\$25	\$30	\$35
Ordering	\$20	\$25	\$30	\$35	\$40	\$45
Service Order Accuracy	\$20	\$25	\$30	\$35	\$40	\$45
Flow Through	\$40	\$45	\$50	\$55	\$60	\$65
Provisioning – Resale	\$40	\$45	\$50	\$55	\$60	\$65
Provisioning – UNE	\$115	\$130	\$145	\$160	\$190	\$230
Maintenance and Repair – Resale	\$40	\$45	\$50	\$55	\$60	\$65
Maintenance and Repair – UNE	\$115	\$130	\$145	\$160	\$190	\$230
LNP	\$115	\$190	\$385	\$460	\$535	\$615
Billing – BIA (see Note 1)	2%	2%	2%	2%	2%	2%
Billing - BIT	\$7	\$7	\$7	\$7	\$7	\$7
Billing – BUDT (see Note 2)	\$0.046	\$0.046	\$0.046	\$0.046	\$0.046	\$0.046
Billing – BEC (see Note 3)	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07
IC Trunks (Trunk Group Performance)	\$25	\$30	\$45	\$65	\$80	\$125
Collocation	\$3,165	\$3,165	\$3,165	\$3,165	\$3,165	\$3,165

Note 1: Reflects percent interest to be paid on adjusted amounts.

Note 2: Amount paid per 1000 usage records.

Note 3: Amount paid per dispute.

**Cbeyond SEEMs Proposal**

**Table 2: Proposed Fee Schedule for Tier 1 per Transaction Fee Determination.**

Performance Measures	Quarter 1	Quarter 2	Quarter 3	Quarter 4 & >
OSS/Pre-Ordering	\$15	\$30	\$90	\$270
Ordering	\$25	\$40	\$120	\$360
Service Order Accuracy	\$25	\$40	\$120	\$360
Flow Through	\$45	\$60	\$180	\$540
Provisioning – Resale	\$45	\$60	\$180	\$540
Provisioning – UNE	\$130	\$190	\$570	\$1,710
Maintenance and Repair – Resale	\$45	\$60	\$180	\$540
Maintenance and Repair – UNE	\$130	\$190	\$570	\$1,710
LNP	\$190	\$535	\$1,605	\$4,815
Billing – BIA (see Note 1)	2%	2%	2%	2%
Billing – BIT	\$7	\$7	\$7	\$7
Billing – BUDT (see Note 2)	\$0.046	\$0.046	\$0.046	\$0.046
Billing – BEC (see Note 3)	\$0..07	\$0..07	\$0.07	\$0.07
IC Trunks (Trunk Group Performance)	\$30	\$80	\$240	\$720
Collocation	\$3,165	\$3,165	\$3,165	\$3,165

Note 1: Reflects percent interest to be paid on adjusted amounts.

Note 2: Amount paid per 1000 usage records.

Note 3: Amount paid per dispute.



### **Cbeyond Proposal: Appendix A: Fee Schedule – Quarterly Calculations**

Currently, data for each metric is gathered and reported monthly and analyzed monthly for the purpose of SEEM payments.. Cbeyond proposes that data for each metric continue to be gathered and reported monthly but that it be analyzed for the purpose of SEEM payments on a quarterly basis. SEEM calculations, statistical analysis and payments would be done on rolled up quarterly data under Cbeyond's proposal. This change to a quarterly SEEMs process would be a significant change that would reduce AT&T's administrative burden of performing SEEM analysis and payments by 300% but would increase the risk that AT&T could intentionally or inadvertently provide discriminatory service and not be penalized. For example, AT&T could deliberately provide a given CLEC bad service for one strategically selected day out of a quarter and not fail the parity measure because the errors, misses, or discrimination of that one day would be weighted against the performance of 90 days instead of 30 days. Hence, certain changes would be necessary to adapt the current fee schedule to the changed assessment time period and to ensure that adequate incentives to provide non-discriminatory service are maintained.

The current month 2 fee schedule for failure to meet parity measures would still be applied to the averaged or totaled three months of data under Cbeyond's proposal, thereby maintaining the current average fee (i.e., month 2 would be the midpoint for the first three consecutive missed quarters) for "initial" noncompliance with the parity measures. What is different in the Quarterly SEEM calculations and payment methodology versus the current Monthly SEEM calculation and payment methodology is the definition "initial." "Initial" is changed from one month to three months, and therefore the quarterly methodology is more forgiving to AT&T. The current month 5 fee schedule for failure to meet parity measures is applied to the averaged or totaled 2<sup>nd</sup> consecutive quarter data thereby maintaining the current average fee for this period (i.e., month 5 is the midpoint for 2<sup>nd</sup> consecutive missed quarter). The penalties that AT&T must pay if it fails parity measures in consecutive quarters after quarter 2 is increased arithmetically for each consecutive quarter of failures (i.e., a 3-fold increase for each consecutive 3 month failure). On average, this payment structure maintains the current penalty structure for the first 6 months of consecutive misses. However, this penalty structure does not stop the escalation of fees after 6 months but continues to increase the fees for consecutive misses for an additional six months and therefore would increase the penalties if AT&T were to habitually fail any parity standard for a time period longer than six months.

A payment de-escalation process is also proposed under Cbeyond's plan. The escalation of payments for consecutive quarters of non-compliant service is matched quarter for quarter with de-escalation of payments for compliant service. For example, if AT&T has 3 consecutive quarter "misses," it will make payments that escalate from quarter 1 to quarter 3 as shown in Table 2. If, in the next quarter, service meets the standard, AT&T makes no payment. A payment "indicator" de-escalates down from quarter 3 to quarter 2. However, if AT&T misses the following quarter, it will make payment at the quarter 2 level shown in Table 2 because that is where the payment "indicator" presently sits. If AT&T misses again the following month, it will make a payment that escalates back to the quarter 3 level. The payment level will de-escalate back to the original quarter 1 level only upon compliant service sufficient to move the payment "indicator" back to the quarter 1 level. This payment de-escalation process is necessary to ensure that AT&T truly eliminates discriminatory conditions and does not just implement a temporary fix in order to reset the SEEM payment level.