## **Ruth Nettles**

000121A-TP

From:

Martha Johnson [marthaj@fcta.com]

Sent:

Friday, March 05, 2010 4:20 PM

To:

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Cc:

Adam Teitzman; Carolyn Ridley; gene.watkins@cbeyond.net; D. Anthony Mastando;

de.oroark@one.verizon.com; Douglas Nelson; gdiamond@covad.com; Jerry Hallenstein; Katherine Mudge; Beth Keating; Lisa Harvey; matt.feil@akerman.com; Robert Culpepper; Susan Berlin; Tracy Hatch; Vicki

Kaufman

Subject:

Docket No. 000121A - FCTA's Letter to Staff re: Workshop Process

Attachments: Docket 000121A - FCTA's Letter to Staff re Workshop Process.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact David Konuch at the number below. Thank you.

A. The person responsible for this electronic filing is:

David A. Konuch Senior Counsel, Regulatory Law and Technology Florida Cable Telecommunications Association 246 E. 6<sup>th</sup> Avenue Tallahassee, FL 32303 850-681-1990 850-681-9676 dkonuch@fcta.com

- B. The docket title is: In Re: Docket No. 000121 Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (AT&T FLORIDA TRACK)
- C. This document is filed on behalf of the Florida Cable Telecommunications Association, Inc.
- **D.** This document has a total of 4 pages.
- E. Description of document: Letter to Staff re: workshop process.

Thank you,

Martha Johnson Regulatory Assistant Florida Cable Telecommunications Association 246 E. 6th Avenue Tallahassee, FL 32303 850/681-1990 850/681-9676 (fax)

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## Florida Cable Telecommunications Association

Steve Wilkerson, President
March 5, 2010

Lisa Harvey, Assistant Director Jerry Hallenstein, Government Analyst II Office of Auditing and Performance Analysis Florida Public Service Commission 2540 Shumard Oak Blvd Tallahassee, FL 32399-0850

Re: Docket No. 000121A-TP

Dear Lisa and Jerry,

Several weeks ago FCTA learned that AT&T and CompSouth had been negotiating terms of a settlement in this docket. FCTA was not privy to the details of the settlement proposal as it was negotiated subject to a non-disclosure agreement to which FCTA is not party. FCTA chose not to sign AT&T's nondisclosure agreement. Rather, as you know, FCTA believes that these complex issues should be resolved through open workshops conducted by Staff. Thus far, the Staff has agreed, and has held multiple workshops and received comments in response. The workshop process was making progress and yielding important results.

When FCTA became aware that negotiations were under way with less than all parties outside of the workshop process, we requested that the Commission staff schedule a status call. FCTA was concerned that any agreement, partial or whole, negotiated solely between AT&T and CompSouth could then be presented to the Commission staff as a final agreement, leaving the other parties to accept it as a *fait accompli*. That concern was underscored when, at AT&T and CompSouth's request, the status call was, without explanation, canceled.

Last week, CompSouth informed FCTA that an "agreement in principle" had been reached (with AT&T), and finally outlined the general terms for FCTA in a conference call last Friday. From CompSouth's description, it does not appear that the agreement is final or that it has been reduced to writing. In fact, we question whether an agreement in principle actually exists, because it appeared from the description that certain key terms remained to be negotiated.

Earlier this week, FCTA received a half-page sheet of bullet points outlining the proposed CompSouth-AT&T agreement. The bullet points supply no additional detail concerning the proposed agreement, and we cannot share them with Staff because CompSouth requested that we not reveal them publicly. Nevertheless, we feel we understand enough that we can inform Staff that FCTA and its member companies oppose the settlement. Too much of the proposed settlement agreement is contingent upon outcomes beyond the scope of the agreement itself and too little is offered for performance assurances. Other parties also have told us they do not support the proposed settlement, notably Cbeyond and STS. Weighing by customer line counts, it appears likely that the majority of competitive providers do not

support the CompSouth-AT&T proposed agreement, and indeed, not even all of the CompSouth members have agreed to sign on.

The proposed CompSouth-AT&T agreement as described to us represents a step backward from the progress already made at the workshops. The gap between what was described to us on the call and what FCTA would consider a fair outcome is too big to breach without the Commission weighing in. Moreover, we are concerned that further postponing the workshop process to allow less than all of the parties to complete negotiations on an agreement that is not accessible by all of the parties will undermine the open process conducted by Staff to date.

FCTA members built their own communications networks to minimize inputs needed from AT&T to provide service to customers. FCTA's goal in this docket is to ensure that AT&T remains subject to <u>sufficient</u> incentive(s) to comply with its wholesale obligations for the few items that FCTA members still need from AT&T to provide facilities based telephony services. These include, among other things, number portability and firm order confirmation requests. Yet, as noted in workshop, AT&T repeatedly fails important metrics -- including missing some for 25 straight months. FCTA members would prefer compliance with the metrics over payment of fines by AT&T. Yet, if the fines are set too low, it becomes easier for AT&T to pay the fines rather than provide the performance. Unfortunately, the proposed CompSouth-AT&T agreement in principle does not correct this deficiency.

When it enacted limited deregulation last year, the Florida legislature carefully maintained this Commission's jurisdiction over AT&T and the other ILECs' wholesale and interconnection obligations and even strengthened them in some instances. The Commission should not permit a handful of parties to negotiate in private and drive this process while other important stakeholders are left on the sidelines with incomplete information and no meaningful opportunity to provide input. Instead, the Commission should resume its oversight role on these issues through the workshop process.

Accordingly, FCTA hereby requests that the Commission staff re-start the collaborative workshop process. FCTA proposes the following:

- The Staff should reconvene a workshop for as soon as one can be noticed under the APA. The parties should resume from a starting point of:
  - o 1) All issues that have been resolved through the workshop process to date. Those decision points would be documented in a matrix, so that all of the hard work done by all of the parties within the workshop process thus far would not be lost.
  - o 2) The Commission staff should then resume its evaluation starting with the Comcast proposal filed January 15, 2010, and have all parties state whether they agree with that approach, and explain why or why not.

We appreciate the hard work staff has put in concerning this project and look forward to hearing how you would like the parties to proceed.

Sincerely

David A. Konuch

Senior Counsel for Regulatory Law & Technology

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following parties by Electronic Mail this 5<sup>th</sup> day of March, 2010:

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