

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 000121A-TP  
ORDER NO. PSC-10-0545-PAA-TP  
ISSUED: August 25, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman  
LISA POLAK EDGAR  
NATHAN A. SKOP  
ART GRAHAM  
RONALD A. BRISÉ

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Settlement Agreement

We adopted a wholesale Performance Assessment Plan (Plan) for the purpose of monitoring performance levels of Operations Support Systems (OSS) provided to Competitive Local Exchange Companies (CLECs) by Order No. PSC-01-1819-FOF-TP, issued September 10, 2001, in Docket No. 000121A-TP. The Order also recognized our vested authority, per Section 364.01(3), Florida Statutes, to provide regulatory oversight necessary to ensure effective competition in the telecommunications industry. This docket has remained open since that time to address issues and concerns arising from the OSS performance.

AT&T's wholesale Performance Assessment Plan provides a standard against which performance can be measured over time to detect and correct any degradation of service provided to CLECs. The Performance Assessment Plan is comprised of a Service Quality Measurement (SQM) Plan and a Self-Effectuating Enforcement Mechanism (SEEM) remedy Plan. The SQM Plan includes a comprehensive and detailed description of AT&T's performance

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measurements, while the SEEM remedy Plan details the methodology for payments to CLECs (Tier 1 payments) and to the State of Florida (Tier 2 payments) when AT&T's performance fails to meet performance standards. The SQM Plan currently consists of 50 measurements with 35 measures applicable to SEEM payments if AT&T fails to meet the approved performance standards as agreed by the parties.

AT&T is required to participate in review cycles to evaluate AT&T's Performance Assessment Plan, pursuant to Order No. PSC-01-1819-FOF-TP. The purposes of the reviews are to gauge the effectiveness of AT&T's performance measures and to determine whether the current remedy structure is effective in driving AT&T's performance toward the required standards. On May 15, 2009, pursuant to an issued Notice in the docket file, we initiated a fourth review of the Performance Assessment Plan. The Notice requested that interested parties to the docket file proposed redline changes (additions and deletions) to the Performance Assessment Plan (SQM and SEEM Plans). On July 10, 2009, AT&T and the Competitive Carriers of the South (CompSouth) each filed redline changes.

On August 5, 2009, AT&T initiated collaborative conference calls between AT&T and CLECs to review the proposed changes submitted to our staff.<sup>1</sup> The initial AT&T conference call commenced on August 17, 2009, with subsequent weekly calls through the month of September.

On October 1, 2009, a conference call was conducted with AT&T and interested parties to determine the progress made through the collaborative effort. On the call, the parties requested that informal workshops be initiated to discuss in detail the areas of agreement and disagreement. Workshops and collaboration are the process followed in each of the three previous reviews with successful results. The first workshop for the current review was conducted on November 9 and 10, 2009, with a subsequent workshop conducted on December 16 and 17, 2009. Approximately 15 parties are participating in the review, including representatives from CompSouth, Saturn Telecommunications Services (STS), and Florida Cable Telecommunications Association (FCTA).<sup>2</sup>

On March 22, 2010, AT&T and CompSouth filed a Settlement Agreement and revised SQM and SEEM Plans. Both AT&T and CompSouth stated that their settlement embodied all of the agreements made by all parties through the workshop process. However, on a March 24, 2010, conference call, FCTA and STS opposed the agreement and requested additional time to assess the agreement in its entirety.

On July 9, 2010, AT&T and CompSouth filed First Revised SQM and SEEM Plans replacing the attachments filed with the original Settlement Agreement filed on March 22, 2010. The revised SQM and SEEM Plans reflect the agreement reached with STS. The First Revised

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<sup>1</sup> Notification was provided via AT&T Accessible Letter number CLECSE09-134, dated August 5, 2009, re: (BUSINESS PROCESSES) (Call) Collaborative to Discuss Proposed Changes to Service Quality Measures (SQMs) and Self Effectuating Enforcement Mechanisms (SEEM).

<sup>2</sup> FCTA represents cable telephony providers throughout the state of Florida. FCTA's five largest members include Atlantic Broadband, Bright House Networks, Comcast, Cox, and Mediacom.

SQM and SEEM Plans are incorporated into the Settlement Agreement between AT&T and CompSouth.

On July 19, 2010, FCTA filed a letter identifying issues still in dispute. On July 19, 2010, a meeting was held to discuss these issues. During the meeting, the parties agreed to further negotiations. On August 2, 2010, FCTA and AT&T filed a Second Revised SQM and SEEM Plan. The Second Revised SQM and SEEM Plans replace the previously filed versions and will be incorporated into the Settlement Agreement filed on March 22, 2010, by CompSouth. The Settlement Agreement and the Second Revised SQM and SEEM Plans reflect the agreements reached between AT&T, CompSouth, STS, and FCTA.

### JURISDICTION

We are vested with jurisdiction over this matter pursuant to Section 364.01(3) and (4)(g), Florida Statutes. Pursuant to Section 364.01(3), Florida Statutes, the Florida Legislature has found that regulatory oversight is necessary for the development of fair and effective competition in the telecommunications industry. To that end, Section 364.01(4)(g), Florida Statutes, provides, in part, that we shall exercise our exclusive jurisdiction in order to ensure that all providers of telecommunications service are treated fairly by preventing anticompetitive behavior. Furthermore, the FCC has encouraged the states to implement performance metrics and oversight for purposes of evaluating the status of competition under the Telecommunications Act of 1996.

### DISCUSSION

#### Settlement Agreement

The Settlement Agreement filed on March 22, 2010, by CompSouth is incorporated by reference and was filed as Document No. 02046-10. The Settlement Agreement was entered into by the parties because of AT&T's desire to abolish Tier 2 and non-service impacting penalties associated with the SEEM Plan in each of the nine states formerly comprising the BellSouth states. CompSouth, FCTA, and other parties sought assurances that AT&T wholesale service quality would not degrade if we decided to abolish Tier 2 penalties. Additionally, the parties desired to create certainty for a specific period of time, as it relates to the SQM and SEEM Plans, in each of the nine former BellSouth states.

A summary of the provisions of the settlement, which includes seven specific terms, is provided below:

1. Subject to approval of the state regulatory authority, the terms of the settlement apply to each of the nine former BellSouth states.
2. Subject to approval of the state regulatory authority, the parties have agreed to modifications of the SQM and SEEM Plans, which are attached to the Settlement Agreement with changes noted.

3. AT&T will be responsible for seeking approval from other state Commissions for the revised SQM and SEEM Plans and the Settlement Agreement. Parties will not oppose the obtaining of approvals.
4. The Settlement Agreement will not preclude a party from participating in state public utility commission investigations involving SQM or SEEM Plan for the term of the settlement.
5. The term of the settlement is for a period of four (4) years from the date of our approval. During this term, parties will not seek any non-administrative changes in the revised SQM and SEEM Plans. Additionally, the parties will not seek any changes or challenges to state regulatory authority to the extent the state regulatory authority has such jurisdiction to adopt or enforce the revised SQM and SEEM Plans.
6. The Settlement Agreement and revised SQM and SEEM Plans are not effective until approved by state regulatory authority in a final non-appealable order without any modification. Until the Settlement Agreement becomes effective, the parties agree to abide by existing approved SQM and SEEM Plans. Commencing with the first full data month after the revised SQM and SEEM Plans become effective in a state, the failure month count for the Tier 1 Fee schedule will be reset to month 1 for all remedied metrics.
7. Parties agree not to initiate an audit of the revised SQM or SEEM Plan for eighteen months after the start of the settlement term. This paragraph shall not affect the ability of a state regulatory authority to audit, as it deems necessary.

#### Second Revised SQM and SEEM Plans

The Second Revised SQM and SEEM Plans filed on August 2, 2010, replaced the previously filed Plans<sup>3</sup> in their entirety and are incorporated into the Settlement Agreement filed on March 22, 2010. A copy of the Second Revised SQM and SEEM Plans are incorporated into this Order by reference, as filed in this docket as Document No. 06283-10.

The SQM Plan has been streamlined to eliminate four performance measures, which the parties believe are no longer relevant. Additionally, one new performance measure was added. Some changes were also made to either the calculation or benchmarks for several other measures in the SQM Plan. In addition to changes to the performance measures, the SQM Plan incorporates some changes to the Audit and Dispute Resolution Policy section. The main change limits AT&T's responsibility to pay for only one audit per version of the SQM Plan. Changes have also been made to streamline the AT&T Policy on Reposting Performance Data and the AT&T Data Notification Process.

The SEEM Plan contains the major changes occurring during this review cycle. SEEM Plan revisions include the elimination of Tier 2 remedies, and in return, an increase to Tier 1 remedies. Parties have agreed to increase Tier 1 remedies for specific performance

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<sup>3</sup> On March 22, 2010, CompSouth and AT&T filed a Settlement Agreement, which included Revised SQM and SEEM Plans as attachments. The July 9 filing by AT&T replaced these attachments with the First Revised SQM and SEEM Plans. The August 2, 2010, filing replaced these attachments with the Second Revised SQM and SEEM Plans.

measurements by 20 to 35 percent, over current Tier 1 levels, when AT&T fails to meet the performance measurement standards for three consecutive months. The 20 to 35 percent increase is triggered commencing with the third month of failure and continuing with each consecutive month of failure through month six. This revision is similar in structure to the methodology employed by Tier 2 remedies in that AT&T is subject to increased remedies when AT&T fails to meet performance measurement standards for three consecutive months or more.

The parties also eliminated several provisions in the SEEM Plan that impose penalties on AT&T for performance activities that do not have direct impact on the level of service provided to the CLEC. Examples of these non-service impacting penalties include fines for remitting remedy payments after the due date and fines for reposting or late posting performance measurement results to AT&T's performance measurement website.

The SQM and SEEM Plans were also revised to reflect administrative and technological changes which have occurred since the approval of the Plan in July 2007. These changes include replacing references to BellSouth with AT&T and replacing references to outdated system interfaces.

#### AT&T's Motion to Approve Lifeline Funding and for Modification of SEEM Payments

On October 16, 2009, AT&T filed a Motion for expedited approval of Lifeline Outreach Funding and modification of SEEM penalty payments. In its Motion, AT&T requested that Tier 2 remedy payments be eliminated because they are unfairly discriminatory, unreasonably punitive, and are no longer appropriate based on market conditions. AT&T argued that competition is firmly entrenched, and, as a result, Tier 2 payments no longer serve their intended purpose and should be eliminated.

As a compromise to the elimination of Tier 2 payments proposed in its October 16, 2010 Motion, AT&T proposed a one-time voluntary contribution of \$250,000 to be deposited in the AT&T Florida Community Service Fund. The purpose of the Community Service Fund is to promote the awareness of the Lifeline Assistance and Link-up programs. According to AT&T, the Community Service Fund is now depleted and is in need of additional funding in order for Lifeline outreach efforts to continue.

Pursuant to Order No. PSC-10-0016-PCO-TP issued on January 5, 2010, we ordered that any ruling on AT&T's Motion be deferred until the review of AT&T's wholesale Performance Assessment Plan is completed, and all proposed changes to the Plan can be brought back, as a whole for decision. We determined that AT&T's Motion was premature and it would be inappropriate to make a decision on one part of the Performance Assessment Plan without thoughtful consideration as to how other parts are affected.

Although we deferred a ruling on AT&T's Motion, we did order that AT&T shall hold, as a corporate undertaking, any Tier 2 payments that became due and payable under the current SEEM Plan pending final resolution. A review of the transcript from the December 15, 2009,

Agenda Conference indicates that we discussed the corporate undertaking as a “safeguard” for all parties involved.<sup>4</sup>

In the March 22, 2010, Settlement Agreement and the Second Revised SQM and SEEM Plans, parties agreed to eliminate Tier 2 and increase Tier 1 penalties. We believe the increase in Tier 1 remedies is an appropriate financial incentive to warrant AT&T’s request to eliminate Tier 2 remedies. As a result, our approval of the Settlement Agreement and the Second Revised SQM and SEEM Plans renders AT&T’s October 16, 2009 Motion moot.

Consequently, AT&T shall retain the Tier 2 payments that have accrued during the pendency of this matter. In the alternative, AT&T has confirmed its commitment to make a one-time voluntary contribution of \$250,000 to be deposited in the AT&T Florida Community Service Fund.

#### CONCLUSION

We find that the Settlement Agreement filed on March 22, 2010, the Second Revised SQM and SEEM Plans filed on August 2, 2010, and the removal of Tier 2 remedies acceptable given that Tier 1 remedies were increased to maintain an appropriate financial incentive to ensure AT&T’s level of service to CLECs is not diminished.

Under the current SQM and SEEM Plans there are 27 measures subject to both Tier 1 and Tier 2 remedies and an additional eight measures that are Tier 2 only. These eight measurements are unique wherein they measure either system or process performance as a whole and failures cannot be attributed to an individual CLEC. Several of the Tier 2 only measures include the Change Management measures, which have been the subject of many discussions by the parties over the past several years. We will monitor the data for these performance measurements.

The Settlement Agreement also precludes parties from seeking any non-administrative changes to the SQM and SEEM Plans for a four-year period from the date of approval. However, nothing precludes us from seeking such changes should the need arise. Additionally, oversight must be maintained though the data reporting and audit provisions in the SQM and SEEM Plans.

Additionally, AT&T’s Motion for Expedited Approval of Lifeline Outreach Funding and Elimination of Tier 2 Remedies is moot, and AT&T shall retain the Tier 2 payments that have accrued since January 2010 and voluntarily deposit a one-time contribution of \$250,000 in the AT&T Florida Community Service Fund.

#### CLOSURE OF THE DOCKET

This Order shall become final upon issuance of a Consummating Order, if no person whose substantial interests are affected timely files a protest within 21 days of the issuance of the Order. The revisions to the SQM and SEEM Plans shall be implemented within 60 days from

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<sup>4</sup> Transcript at pages 66 and 69.

the date of the Consummating Order. This docket shall remain open pending the implementation of our decision and for purposes of future performance measure monitoring.

RULING

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Settlement Agreement filed on March 22, 2010, incorporating the Second Revised SQM and SEEM Plans filed on August 2, 2010, as it relates to Florida only, is approved. It is further

ORDERED that AT&T's Motion to Approve Lifeline Funding and for Modification of SEEM Payments is moot. It is further

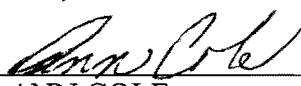
ORDERED that AT&T shall retain the Tier 2 payments that have accrued since January 2010 and voluntarily deposit a one-time contribution of \$250,000 into the AT&T Florida Community Service Fund. It is further

ORDERED that the revisions to the SQM and SEEM Plans shall be implemented within 60 days from the date of the Consummating Order. It is further

ORDERED that the docket shall remain open pending the implementation of our decision and for purposes of future performance measure monitoring. It is further

ORDERED that this Order shall become final upon issuance of a Consummating Order, if no person whose substantial interests are affected timely files a protest within 21 days of the issuance of the Order.

By ORDER of the Florida Public Service Commission this 25th day of August, 2010.



ANN COLE  
Commission Clerk

(SEAL)

AJT/PERE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this Order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 15, 2010.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.