

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-10-0664-FOF-TP ISSUED: November 2, 2010
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The following Commissioners participated in the disposition of this matter:

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

FINAL ORDER DENYING MOTION FOR CLARIFICATION
OF PAA ORDER

BY THE COMMISSION:

CASE BACKGROUND

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 OSS performance.

We have jurisdiction over wholesale competition and the responsibility to ensure that BellSouth Telecommunications Inc. d/b/a AT&T Florida (AT&T) is providing nondiscriminatory wholesale services at parity, pursuant to Order No. PSC-01-1819-FOF-TP. AT&T is required to participate in review cycles, which evaluate Service Quality Measure (SQM) and Self Effectuating Enforcement Mechanism (SEEM) Plans.

From August to September 2009, AT&T, on its own initiative, and interested parties to the docket attempted to negotiate and resolve the proposed changes to the SQM and SEEM Plans that were submitted to us. After failed negotiations, the parties requested that we initiate informal workshops to discuss in detail the areas of agreement and disagreement. Workshops were conducted in November and December 2009 with approximately 15 parties participating, including representatives from Competitive Carriers of the South (CompSouth), Saturn Telecommunications Services (STS), and Florida Cable Telecommunications Association (FCTA).

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FPSC-COMMISSION CLERK

After the workshops, on March 22, 2010, AT&T and CompSouth filed a Settlement Agreement and Revised SQM and SEEM Plans in this docket. STS and FCTA did not participate in the settlement negotiations, and both opposed this agreement. In June 2010, after further negotiations, AT&T and STS were able to consummate an agreement. The First Revised SQM and SEEM Plans were filed with us on July 9, 2009, reflecting this agreement.

On August 2, 2010, FCTA was also able to reach an agreement with AT&T. The Second Revised SQM and SEEM Plans document the changes mutually agreed to by all parties. The Second Revised SQM and SEEM Plans were filed on August 2, 2010, and replaced the First Revised SQM and SEEM Plans.

On August 12, 2010, FCTA filed a letter with us. FCTA clarifies for the record that FCTA's joint filing with AT&T represents consensus on what we should approve in the revised SQM and SEEM Plans. FCTA clarifies that its consensus is not a settlement agreement. Additionally, the consensus between FCTA and AT&T only reflects operations in Florida and does not apply in any other state.

At the August 17, 2010 Agenda Conference, we approved the Settlement Agreement filed on March 22, 2010, incorporating the Second Revised SQM and SEEM Plans filed on August 2, 2010. The docket remains open for monitoring.

On August 25, 2010, we issued Order No. PSC-10-0545-PAA-TP, approving a March 22, 2010 Settlement Agreement between AT&T and Competitive Carriers of the South (CompSouth) which incorporated the Second Revised SQM and SEEM Plans.

On September 15, 2010, FCTA filed a Motion to Clarify Order No. PSC-10-0545-PAA-TP, in which FCTA advised that the Motion was not a formal protest to the Order and that it supported the Order. FCTA also requested an amendatory order stating that FCTA was not a signatory on the AT&T and CompSouth or the AT&T and STS agreements.

On September 22, 2010, AT&T filed its Response in Opposition to FCTA's Motion to Clarify Order No. PSC-10-0545-PAA-TP. AT&T based its opposition on substantive and procedural defects in FCTA's Motion.

JURISDICTION

The Commission is 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 the Commission shall exercise its 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

FCTA's Position

On September 15, 2010, FCTA filed its Motion to Clarify Order No. PSC-10-0545-PAA-TP. In its Motion, FCTA requested that we issue an amendatory order to clarify that the settlement provisions of Order No. PSC-10-0545-PAA-TP pertained only to the parties that executed the settlement with AT&T and not to non-signatory parties on the docket such as FCTA and its members. Specifically, FCTA seeks clarification that (1) FCTA and its members are not signatories to the Settlement Agreement between AT&T Florida and CompSouth; (2) FCTA and its members are not signatories to the separate Settlement Agreement between AT&T Florida and STS; and (3) FCTA and its members are not governed by the terms of the Settlement Agreements in any other states.

FCTA asserts that its Motion is not an objection to the implementation of the Second Revised SQM and SEEM Plans. FCTA supports its motion by stating that (1) it was an active participant in the process that led to the development and submission of the Second Revised SQM and SEEM plans approved by Order No. PSC-10-0545-PAA-TP; (2) it was not a party to the Settlement Agreement filed by CompSouth on March 22, 2010; (3) attachments filed with the Settlement Agreement contained specific revisions to the SQM and SEEM plans that those parties had developed; (4) FCTA filed a clarification letter with us on August 12, 2010, because Staff's recommendation could be read to imply that FCTA was a party to the Settlement Agreement; and (5) by not being a party to any settlement, the FCTA's consensus regarding the Second Revised SQM and SEEM plans was binding only in Florida.

FCTA stated that it did not oppose our approval of the Second Revised SQM and SEEM plans, but wanted the record to establish that it did not execute any Settlement Agreement with AT&T and that its consensus with respect to the Second Revised SQM and SEEM plans cannot and should not be construed or interpreted as acquiescence to be bound by the terms of the Settlement Agreement.

Therefore, FCTA requested that we issue a brief amendatory order clarifying that the terms of the Settlement Agreement did not apply to FCTA or any of its members. FCTA also requests that the amendatory order states that neither FCTA nor any of its member companies are signatories to the separate AT&T-CompSouth bi-lateral agreement, or any other agreement.

AT&T's Response

On September 22, 2010, AT&T filed its Response in Opposition to FCTA's Motion to Clarify Order No. PSC-10-0545-PAA-TP. AT&T asserts that for both substantive and procedural reasons, FCTA's Motion should be denied. AT&T asserts that FCTA was provided ample opportunity at the August 17, 2010 Agenda Conference to request any clarification it might have needed. AT&T further asserts that a PAA order, once issued, can be modified only through one of two mechanisms, namely (1) a party seeking modification or alteration may file a petition for formal proceeding, that is, a formal protest, or (2) we may, on our own motion, withdraw the PAA Order before the order becomes final. Since neither event occurred here,

AT&T asserts that FCTA's Motion is not a protest to the PAA Order, noting that the Motion expressly stated that FCTA did not object to the approval and implementation of the Second Revised SQM and SEEM Plans. AT&T asserts also that FCTA's Motion did not comply with the formal proceedings requirements of Rule 25-22.036, Florida Administrative Code (F.A.C.), or Rule 28-106.201, F.A.C., and must therefore be denied.

AT&T further asserts that we typically treat motions for clarification as motions for reconsideration, and based on our standards for reconsideration, FCTA's Motion is procedurally and substantively defective. According to AT&T, a motion for reconsideration must be filed within 15 days and FCTA's Motion was filed 21 days after the issuance of the order. Additionally, AT&T proposes that Rule 25-22.060(1), F.A.C., prohibits us from considering motions for reconsiderations of a Notice of Proposed Agency Action Order. Therefore, AT&T summarizes that FCTA's Motion must be denied for these procedural reasons as well. AT&T also asserts substantive grounds for denying FCTA's Motion as the Motion fails to point to any error of fact or law upon which reconsideration or clarification can be grounded.

Finally, AT&T asserts that the record clearly shows that FCTA and its members are not signatories to either the CompSouth Settlement Agreement or the STS Settlement Agreement, and the CompSouth and STS agreements do not govern FCTA or its members. AT&T also stated that our order does not bind or govern the parties in other states as the parties are governed by the jurisdiction of the other states' commissions. Therefore, AT&T argues that no clarification is needed, and FCTA's Motion should be denied.

Analysis

FCTA's Motion to Clarify Order No. PSC-10-0545-PAA-TP is denied as the record sufficiently clarifies that: (1) FCTA and its members are not signatories to the Settlement Agreement between AT&T Florida and CompSouth; (2) FCTA and its members are not signatories to the separate Settlement Agreement between AT&T Florida and STS; and (3) we have jurisdiction over the parties only in Florida.¹

FCTA's request for a brief amendatory order clarifying that the terms of the Settlement Agreement do not apply to FCTA or any of its members is also denied, as FCTA did not identify any scrivener error in the PAA Order, and the record sufficiently shows that FCTA and its members are not signatories to the Settlement Agreements. Therefore, clarification is not necessary.

Further, FCTA's request that an amendatory order be issued to clarify that FCTA and its members are not governed by the terms of the Settlement Agreements in any other states is denied, as we have jurisdiction only in Florida. Moreover, Order No. PSC-10-0545-PAA-TP stated that the Order approved the March 22, 2010 Settlement Agreement incorporating the Second Revised SQM and SEEM Plans as it related to Florida only.² Additionally, FCTA in its

¹ See Order No. PSC-10-0545-PAA-TP, page 7 under Ruling which states: "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."

² See footnote 1 above.

letter filed on August 12, 2010, clarified that FCTA's consensus and joint filing on the SEEM and SQM Plans reflects operators in Florida and not other states.³ FCTA also asserts in its letter filed on August 12, 2010, that it had no ability to forge a consensus on behalf of operators in states other than Florida.⁴ FCTA further clarifies that no agreement or consensus existed between FCTA and AT&T and that the terms of their consensus was not applicable in any other states. Therefore, no further clarification is necessary.

FCTA's Motion requests clarification and not reconsideration of Order No. PSC-10-0545-PAA-TP. FCTA asserts that it did not object to the Commission's approval of the Second Revised SQM and SEEM Plans. Therefore, FCTA's Motion is not considered a motion for reconsideration. However, if FCTA's Motion was considered a motion for reconsideration, then it is denied because motions for reconsiderations are not available for Notice of Proposed Agency Action Orders. Rule 25-22.0376, F.A.C., provides that we shall not entertain a motion for reconsideration of a notice of proposed agency action. Therefore, FCTA's Motion, if considered as a motion for reconsideration, is denied.

We find it appropriate to deny FCTA's Motion to Clarify Order No. PSC-10-0545-PAA-TP and its request for the issuance of an amendatory order.

This docket should remain open for purposes of future performance measure monitoring.

RULING

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Cable Telecommunications Association's Motion to Clarify Order No. PSC-10-0545-PAA-TP, is denied. It is further


ORDERED that Florida Cable Telecommunications Association's request for an amendatory order, is denied. It is further

ORDERED that this docket shall remain open for purposes of future performance measure monitoring.

³ See page 1 of FCTA's letter filed on August 12, 2010, as Document No. 06665-10 in this docket.

⁴ See page 2 of FCTA's letter filed on August 12, 2010, as Document No. 06665-10 in this docket.

By ORDER of the Florida Public Service Commission this 2nd day of November, 2010.



ANN COLE
Commission Clerk

(S E A L)

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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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.