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Comments and Opinions

Date: February 6, 2009

Subject: Docket 000121A-TP

**Comments on Commission Proposal to Double The Florida Self-
Effectuating Enforcement Mechanism**

Sent via: Electronic Mail and Federal Express

Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Attention: Office of the Commission Clerk,

I am writing these comments on behalf of Saturn Telecommunication Services, Inc. ("STS"), a CLEC operating primarily in South Florida.

STS commends the Florida Public Service Commission's ("FPSC") Staff for their hard work and findings regarding the April Release of AT&T 22-State OSS alignment. STS is extremely concerned that Staff's recommendation to double the SEEM performance measurement payments in future ATT OSS releases does not go far enough to persuade AT&T to take prudent precautions and perform appropriate testing prior to future releases. Staff's recommendation does not adequately punish AT&T for its gross negligence and malfeasance regarding the earlier releases, is not sufficient to deter AT&T from making similar blunders in the future and does not adequately compensate the CLECS for the tremendous harm AT&T caused by their highly improper actions. STS firmly believes that the problems with the release evidence anticompetitive behavior by AT&T, that mandate that the Petitioners' request for a "show cause" proceeding be granted.

The Commission should not overlook that prior to the April release, on numerous occasions STS advised AT&T that the upcoming release was fraught with problems. STS also urged the FPSC to stop the release. In spite of STS' warnings, AT&T went ahead

with the release and unfortunately, proved STS to be right. The findings from the FPSC strongly suggest misrepresentations and cover-ups by AT&T. In our humble opinion, AT&T's flaunting of the law and reckless behavior require swift and decisive action by the FPSC. Shortly after the publication of the initial AT&T "Accessible Letter", STS notified AT&T that it was concerned that the methodology and procedures of the 22-State OSS alignment were fatally flawed. At the same time, STS also advised AT&T that its methodology of informing the CLEC community was ineffective. AT&T simply ignored these warnings and proceeded with the disastrous release. On numerous occasions, STS requested that AT&T provide a single point of contact for STS personnel to discuss key features and flaws, so that AT&T could take corrective actions prior to implementation. These requests were also ignored. In view of STS' warnings and the inadequate testing by AT&T as found by the FPSC Staff, the April failure was caused by AT&T's gross negligence, reckless indifference or intentional misconduct.

In the report issued 12/17/2008, FPSC Staff stated that; "**AT&T missed an important opportunity to solicit input from its clients in the CLEC community in this key learning process**". This is a statement of AT&T's behavior after the disastrous release in determining failures and root causes of such failure. This overlooks the missed opportunities of AT&T prior to the issuance of the release in which it did not adequately notify the CLEC community of the upcoming OSS release and ignored warnings of its inevitable failure. On April 18, 2008, in a final desperate attempt to advise AT&T that their 22-State OSS alignment upgrade would be catastrophic, senior management of STS including their Executive Vice President (Legal and Regulatory) Mr. Keith Kramer held a conference call with some of the management personnel of AT&T who were directly involved with the OSS upgrade, to review all of the specific points that STS forecasted would fail and lead to a catastrophic meltdown of the system. After hearing STS' concerns, these AT&T management personnel agreed that the April release would lead to failure. Mr. Kramer then advised all of the participants on the conference call, "for the record", that AT&T should not proceed with implementation since there was definitive proof that such implementation would lead to failure. AT&T's response was that they had no choice except to proceed.

Since so many people were part of the conference call, we do not believe that AT&T could deny this call, yet AT&T conveniently ignored this call to lead the Commission to believe that "**the company (AT&T) grossly underestimated the quantity, scope and severity of defects that might be encountered.**" AT&T's position is disingenuous, because AT&T knew exactly what would happen when it went into production on the OSS upgrade on April 19, 2008.

AT&T's decision to ignore the warnings should be considered "willful" misconduct by AT&T. If one knows that the actions that one takes will lead to significant damage and can take action to avoid such damage but decides (for profit or gain) to proceed, then one must take responsibility for their actions. AT&T is no less culpable than Ford, when Ford continued to manufacture and sell its Pinto knowing that it was prone to explosion in a rear end collision, but decided it was more profitable to pay for the death and destruction instead of correcting the problem.

Prior to the release STS sent a letter to the FPSC on April 14, 2008, which FPSC forwarded to AT&T, outlining all of the concerns that STS had with the OSS upgrade and

the lack of key processes, and questioned whether AT&T complied with the 96 Act. (See attached) In the letter STS brought up key points such as:

1. Failure to adequately notify the CLEC community.
2. Improper training of their employees.
3. Improper methodology in development.
4. Whether it affects SQM/SEEM remedy payments.
5. Reporting of system functionality.
6. Escalation process.

Finally in this letter STS stated: **It is clear that this (April OSS Release) will result in catastrophic service issues and irreparable harm to the industry, giving AT&T an unfair competitive advantage while the CLECs move for corrective action.** STS made this prediction, not because its personnel are clairvoyant but the evidence was clear and compelling that the OSS upgrade would fail because of numerous fatal flaws in AT&T's processes and methodology. This commission should inquire of AT&T as to how a small CLEC like STS can be certain of the failure of the April release, when a company as big and powerful as AT&T claims ignorance. More importantly, the commission should inquire of AT&T as to why and for what reasons did AT&T allow their release to fail. The clear answer is "profit".

Based on the history, the FPSC should be extremely concerned with the fact that **AT&T has made numerous statements in its key learnings which promise future compliance with policies or proceedings, or improved future performance. With only such statements, Commission staff cannot fully opine whether appropriate and adequate measures have actually been undertaken to prevent issues with future releases.** We have no doubt that AT&T's promises of change are illusory for all the reasons listed above and more. STS agrees with the FPSC that a mere promise of doing better is insufficient. It would only allow AT&T to continue its refusal to comply with the minimum standards set by the Congress in the Telecom Act of 96, the FCC with regards to Section 271 compliance, and industry standards. The failure of AT&T to provide for the minimum necessary standards to comply with all sections of the 96 Act, specifically Section 271, only benefits AT&T. When these failures were occurring, AT&T had multiple win-back tariffs in place with several more being filed with the FPSC during the time period of the failure. It is obvious that with the AT&T OSS failure combined with win-back tariffs, and AT&T's own sales and agent bonuses for selling win-back services that the failures caused by the release allowed predatory practices of the selling of services while the CLECs were impaired in the provisioning of new services.

The OSS failure was catastrophic and caused substantial and irreparable harm to the CLEC industry. Further as STS has demonstrated, these failures were known well in advance by AT&T, and AT&T took no action to prevent the catastrophe. It is clear and evident that AT&T's management had a deadline for implementation that they were going to, adhere to, regardless of any issues that would affect the OSS upgrade or the severity of said issues. Since the AT&T/BellSouth merger, there has been, undeniably, a corporate policy or directive to continue to scale down CLEC services regardless of the impact to the CLEC community. AT&T is the CLEC's main competitor while at the same time clearly still being the single most important source of access (to UNEs and UNE Combinations as provided for in Section 251 of the Act) to the end-user for their

goods and services. When access for whatever the reason is denied or made to be discriminatory, then irreparable harm results to the Competitive CLECS.

AT&T takes the position that they clearly know that real tangible mistakes were made and that they will do better in the future. **Despite these failures, AT&T calculated that it owed no penalties for missing this measure under the Self-Effectuating Enforcement Mechanism (SEEM).** This position is clearly inconsistent. Moreover, if the remedy payments are doubled in the future, AT&T will still maintain the position that no payments are owed. Two times zero is still zero. Thus it is difficult to envision how a doubling of the remedy payments would serve as a deterrent.

STS is concerned that if the Commission allows AT&T to escape from the consequences of its recent misconduct regarding the OSS releases, with only the threat of future penalties, it would not serve to deter AT&T from committing future abuses, but rather serve as an incentive and justify AT&T's decision to go forward with the releases as scheduled. AT&T committed these abuses for financial gain, and the only way to deter future unlawful conduct is to make AT&T suffer the consequences of its actions, and make these unlawful acts unprofitable. This would benefit not only the CLEC community but the citizens of the State of Florida. The April release evidences anticompetitive behavior at its worst. Simply doubling the remedy payment in the future is inadequate and unjust. Florida Statutes section 364.285 authorizes Commission to issue fines for violations of the chapter. Moreover the Commission should make AT&T answer to it for its actions in a "show cause" hearing.

The AT&T 22-State OSS alignment upgrade affected services throughout the nine BellSouth States. STS applauds the work of the FPSC and their efforts to maintain a vibrant competitive industry. We hope that in the event that a "show cause" hearing is not practical, then the recommendations that Staff have provided will be approved and that it will cause AT&T to actually improve their performance with regard to future OSS upgrades. However, it is our firm opinion based upon past practices of AT&T and the severity and outrageousness of the transgressions in the OSS release, AT&T will only change when faced with very grave financial repercussions.

Respectfully,

s/ ALAN C. GOLD

Keith Kramer
Executive Vice President
Legal and Regulatory
STS Telecom

Re: AT&T's retirement of the current OSS and implementing a new system so as to align all AT&T 22 state region.

Date: April 14, 2008

Beth Salak, Director of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Mrs. Salak,

The CLEC community of the original nine BellSouth regions is extremely concerned over the AT&T replacement of the current OSS systems which are provided for within each of the CLEC's Interconnection Agreement. Last year, AT&T made several changes to its "Carrier Notification" process without taking the necessary procedures to notify all CLECs of the changes. Today, numerous CLECs are unaware of both the changes to AT&T's carrier notification process as well as the dramatic change that AT&T will be implementing this year as to how CLECs process orders, changes, and repairs. This is quite disturbing.

In order to align all of their 22 State region, AT&T is retiring the current OSS systems which have been in place and evolved for over a decade to a completely different system. Over the past few months we have made numerous attempts to clarify with AT&T with regards to the implementation, operations, training, and interoperability with the CLECs current systems, and have asked many other questions regarding the new system. AT&T as of this date has yet given us straight-forward answers to all of our questions and concerns.

AT&T has dictated that this change will be implemented and that in most cases the system that CLECs have been using for over a decade will be retired one day, and the next morning a new system will be in place that all CLECs will be required to use. AT&T is implementing this change in total disregard to the concerns and wellbeing of the CLEC community. It is clear that this will result in catastrophic service issues and irreparable harm to the industry, giving AT&T an unfair competitive advantage while the CLECs move for corrective action.

In order to avert such dire issues, CLEC's require that certain criteria be met to ascertain whether or not such new proposed System is at parity with the current systems.

1. CLECs must be able to run both OSS systems side by side before the current system is retired to ascertain numerous issues such as but not limited to:
 - a. Training of employees.
 - b. Internal controls to ensure that their customer's service will not be interrupted and at a minimum, reporting and repair must be equivalent to the past OSS system and procedures.
 - c. CLEC's current support systems designed to operate with current systems can be modified, changed or re-created, at a reasonable cost, to work with the proposed new OSS systems.
 - d. That the new OSS system is at parity or better than current system.
2. Prior to implementation, at no cost, AT&T must provide for hands on training with CLEC's personnel and provide assistance with help desk functionality certifying that each CLEC can operate the new OSS system..
3. Since AT&T is implementing a completely new system an "escalation process" must be in place to address training and operational issues; this can not be "business as usual".
4. AT&T must advise all nine previous BellSouth State Commissions of the proposed changes and have all proper disclosures made so that no issues from such system changes will affect the public and citizenry of each state and to ensure that AT&T will not unfairly compete in these States. Such issues and disclosures should include but not be limited to:
 - a. All E-911, 911 set up and functionality to be unaffected.
 - b. Service reporting methodology; specifically are there studies made by AT&T between current OSS systems and the proposed new system to show parity.
 - c. How does this affect the SQM/SEEM matrices?
 - d. Time line issues from DATA level entry of end-user problems to repair resolution.
 - e. Reporting of System functionality of all products and services as provided for in the CLEC's Interconnection Agreements.
 - f. Parity of all System functionalities with comparisons to current OSS Systems and that which AT&T provides its own end-users.
5. In a public forum with each of the former nine BellSouth State Commissions, AT&T must be required to address each of these issues and demonstrate and prove that the new OSS system it intends to implement is in the CLEC's and the public's best interest and complies with all of the following:
 - a. The Telecom Act of 96.
 - b. The FCC's Triennial Review Order.
 - c. The FCC's Triennial Review and Remand Order.
 - d. The AT&T "Merger Commitments" provided to the FCC, December 28, 2006.
 - e. With "Parity" sections within each of the CLEC's Interconnection Agreements.

To the extent that AT&T has provided a version of this proposed OSS system in the previous thirteen SBC States does not necessarily equate to such system being equivalent to what is currently being provided. In this case "Parity" does not equate to quantity, but rather to quality. In addition to the irreparable harm that would result to the CLECs within this nine state region, concern over the harm to the public at large within each State must come to the attention of that State's Commission. Further "Parity" of the proposed OSS system is an issue for the FCC. Because this concerns twenty two States and is a result of a merger approved by the FCC, the FCC must concern itself with these issues concurrently with the State Commissions.

Mrs. Salak, the above concerns are a result of lengthy discussions with AT&T over the last several months. We strongly believe the issues raised in this letter must be addressed. Once AT&T has changed the current OSS system to the new proposed systems, they will retire the old and there is no going back. Pre-empting this potential catastrophe is essential to the survival and good health of the CLEC community, and in the public's best interest.

Sincerely,

Keith Kramer
Executive Vice President
Legal and Regulatory
STS Telecom