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Sent: Friday, February 06, 2009 4:11 PM
To: Filings@psc.state.fl.us
Cc: Culpepper, Robert; Woods, Vickie; Holland, Robyn P; Eure, Micale
Subject: Docket 000121A-TP (Filing 02/06/09)
Importance: High
Attachments: 000121A-TP Comments re Staff's SEEM Additive Proposal.pdf; AT&T's Comments - Staff's SEEM Additive Proposal.DOC

- A. Brenda Slaughter
Legal Secretary to Robert A. Culpepper, John T. Tyler and Dorian Denburg
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- B. Docket No. 000121A-TP: In Re: Investigation into the Establishment of Operations Support Systems Permanent Incumbent Local Exchange Telecommunications Companies.
- C. BellSouth Telecommunications, Inc.
on behalf of Robert A. Culpepper
- D. 16 pages total in PDF format (includes letter, certificate of service and pleading); 13 page WORD in lieu of disk
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Comments Regarding Staff's SEEM Additive Proposal

<<000121A-TP Comments re Staff's SEEM Additive Proposal.pdf>> <<AT&T's Comments - Staff's SEEM Additive Proposal.DOC>>

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February 6, 2009

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000121A-TP

**In Re: Investigation into the establishment of operations support systems
permanent incumbent local exchange Telecommunications companies**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T Florida") Comments Regarding Staff's SEEM Additive Proposal, which we ask that you file in the referenced docket.

A copy of the same is being provided to all parties as reflected in the attached certificate of service.

Sincerely,

Robert A. Culpepper

Enclosures

cc: All parties of record
Jerry D. Hendrix

694934

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CERTIFICATE OF SERVICE
Docket No. 000121A-TP

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

Electronic Mail and U.S. Mail the 6th day of February, 2009 to the following:

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Robert A. Culpepper

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the Establishment)
of Operations Support System Permanent) Docket No. 000121A-TP
Performance Measures for Incumbent)
Local Exchange Telecommunications) Filed: February 6, 2009
Companies (BellSouth Track))
_____)

**AT&T FLORIDA'S COMMENTS REGARDING
STAFF'S SEEM ADDITIVE PROPOSAL**

In response to the Commission Staff's Notice Seeking Comment dated January 28, 2009 ("Notice"), BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida or "AT&T") respectfully submits the following comments regarding Staff's proposal to double all SEEM payments (Tiers I and II) for a six month period following the implementation of the next AT&T 22-state OSS release in lieu of a request for the Commission "to issue a show cause proceeding to require AT&T to explain why it should not be penalized for its failure to appropriately implement the April [2008 OSS] Release."

As explained below, Staff's proposal is not necessary to ensure the adequacy of future 22-state OSS releases. Further, Staff's proposal would result in an unwarranted financial windfall to competitive local exchange carriers ("CLECs") operating in Florida (because SEEM payments would automatically double regardless of AT&T's performance in implementing the next 22-state OSS release). While intended to incent AT&T to ensure the quality of future releases, to the contrary, Staff's proposal would discourage AT&T from moving forward with future 22-state OSS releases. Moreover, there is no basis for a lengthy "show cause" proceeding because there is absolutely no evidence that AT&T refused to comply with or willfully violated any Commission rule or order in connection with the April Release.

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INTRODUCTION

AT&T has grave concerns with Staff's proposal to double AT&T's SEEM liability on all performance measures during the six months following the next 22-state release ("SEEM Additive proposal" or "proposal"). In addition to being unnecessary, the proposal is unlikely to achieve Staff's belief that "the doubling of SEEM payments [would serve] as an incentive to ensure that AT&T's future releases are without major defect."

Challenges associated with the April 2008 OSS Release ("April Release") have been completely overcome, and the process improvements AT&T made in response to the April Release are now providing significant benefits to the affected parties. The April Release was the first in a series of OSS releases that when fully implemented, will allow CLECs to use the same interfaces in all regions. The next 22-state release and other planned releases will build on the foundation of the April Release to provide improved mechanization, improved flow through, and improved service center responsiveness. AT&T's goal of implementing a 22-state OSS platform is an undertaking that requires the investment of significant resources and capital. Although AT&T remains of the belief that such an undertaking is a worthy investment, Staff's proposal jeopardizes AT&T's plans to implement a 22-state OSS platform and will ultimately harm, rather than help CLECs operating in Florida because the proposal will unjustly penalize AT&T and will strongly discourage AT&T from completing this OSS consolidation project as well as other projects beneficial to the local wholesale community.

It is respectfully submitted that Staff should strongly consider the timing of its proposal. In May 2008, the effects of the April Release were still being felt and AT&T was in the initial stages of developing release-related process improvements. At that time (almost 10 months ago) it could be argued that some additional incentive was an important regulatory objective.

However, in February 2009, when AT&T and the CLECs have fully recovered from the April Release, as demonstrated by the nearly flawless August and November releases, and by the tangible process improvements that have been implemented, there is simply no basis for imposing a SEEM Additive proposal that will penalize AT&T at a time when AT&T is in the process of delivering even greater OSS improvements to CLECs. Given AT&T's efforts and expenditures since May 2008, such a proposal would clearly operate as a penalty, rather than an incentive.

Additionally, the dire economic conditions have not left AT&T unscathed. Scarce capital funding and limited investment capability is a real issue for AT&T. It is no exaggeration for AT&T to state that a punitive SEEM Additive will very definitely affect AT&T's ability to invest in its local wholesale OSS. In sum, rather than a means to incent a flawless 22-state release, Staff's proposal may simply prevent one.

I. Staff's Proposal is ineffective public policy because it is unnecessary and unlikely to achieve its stated objective.

Staff indicates that the purpose of its proposal is to "serve[] as an incentive to ensure that AT&T's future releases are without major defect." Those assurances are already in place and no financial incentive, beyond that already in existence, is necessary to ensure that the next 22-state release is of reasonable quality. Moreover, the proposal is likely to discourage, rather than encourage investment in local wholesale OSS.

A. Staff's SEEM Additive Proposal is not necessary to ensure that the next 22-state release is of a reasonable quality; the process improvements AT&T has already implemented provide such assurances.

As explained in AT&T's Comments regarding Staff's Audit Report, AT&T has implemented over 32 significant process improvements since the April Release. A number of those initiatives can be directly mapped to improved release performance, including:

- The Enhanced Test Plan, an example of which was reviewed with Staff on September 11, 2008;
- Integrated and improved 22-state defect reporting, communication (EDR) and resolution processes, including the consolidated defect management tools (the 22-state Vantive tool);
- Improved vendor relations and communications processes, including expanding the joint architecture team and establishing a technical oversight committee with responsibility for oversight of all change requests;
- Improved CLEC communications, including better managed CMP forums, daily status postings and calls during and after Release weekends, and a process to solicit input into draft accessible letters.

And while Staff suggests that “[w]ith only such statements or promises, commission staff cannot fully opine as to whether appropriate and adequate measures have actually been undertaken to prevent CLEC-impacting issues with future releases...;” it is not necessary to rely on statements alone. AT&T has shown with its commitments, its conduct and with its results, that adequate measures have been taken. AT&T provided the enhanced test plan to Staff and reviewed it with CLECs this past fall. It has implemented the improved EDR process and better communications are in place and functioning. The efficacy of these actions and other improvements was demonstrated in the nearly flawless August and November releases. A punitive SEEM Additive proposal will not incent a better 22-state release, rather it will likely prevent one altogether.

B. Staff's SEEM Additive Proposal would not incent AT&T to produce higher quality releases going forward and would instead discourage investment in the OSS serving Florida CLECs, including the next 22-state release.

As explained in Section C below, AT&T has incurred substantial additional SEEM liabilities in connection with the April Release (over \$16 million regionally and almost \$5 million in Florida). That is more than ten times the SEEM payments that would have been made under normal operating conditions.¹ Further, it is over \$16 million that AT&T no longer has available to invest in other desired capital improvements, including a number of CLEC OSS improvement requests (Change Requests or CRs) that are not yet funded. When the cost of prospective OSS improvements exceed well beyond actual capital dollars, AT&T must re-evaluate how shareholder funds should be invested. As AT&T explained in its recent investor briefing, it has cut 10-15% from its capital budget this year in response to the dire economic conditions. Much like the issues State Commissions faced when determining the appropriate rate of return in years past, determining what, if any, additional incentive is appropriate must carefully balance the needs of customers, the Company and its investors. An unreasonable approach will not only fail to produce better releases, it could prevent any release at all.

AT&T believes investing in OSS is the much better use of limited resources, particularly in these very challenging economic times. Staff's proposal, if implemented, would expose AT&T to as much as an *additional* \$2.5 million in SEEM liability for a customary release and up to \$19 million for a release similar in quality to the April Release.² The dollars would go to CLECs and the Commission, under Staff's proposal, rather than into infrastructure where they

¹ SEEM payments in the six months *preceding* March 2008 averaged about \$415,000 per month for the region.

² These are regional numbers. For Florida alone, the exposure is between \$479,000 and \$4.5 million.

would benefit all users of OSS for years to come.³ AT&T's preference is to use the available funds for important enhancing work, such as CLEC requested upgrades to Verigate.

Even if Staff favors an unmerited penalty over investment, it must still be concerned about the potential effects that its proposal may have on AT&T operations throughout the region. Staff may view this proposal as one that will resolve Florida OSS issues and the complaint filed by the Petitioners, but the reality is that some CLECs may seek to export Staff's proposal to other Southeast states to obtain an unwarranted windfall. Staff's proposal, if implemented in all nine states, could cost AT&T as much as \$19 million *above and beyond* normal SEEM liability. At such an exorbitant cost, AT&T most likely would abandon plans to implement another 22-state release and would have reduced (or no) funds available to even consider the pending CLEC change requests. To the contrary Staff's recognition that AT&T has already recovered from the April Release and that AT&T has more than paid sufficient amounts via the SEEM plan (and the proactive billing adjustments) to ensure reasonable quality releases going forward is the best way to avoid such an issue.

C. Given the substantial SEEM liability incurred in connection with the April Release, no SQM/SEEM Plan modifications are necessary to ensure that AT&T has sufficient incentive to implement the next 22-state release in a manner that results in minimal impact on CLEC operations.

Again, AT&T has estimated that the issues resulting from the implementation of the April Release resulted in an incremental increase of approximately \$16.2 million in SEEM liabilities in the nine-state southeast region; including approximately \$4.8 million in additional SEEM liabilities in Florida.⁴ Additionally, to address billing concerns associated with the April

³ The payments could range from \$5,000 for some CLECs to as much as \$3.1 million for larger volume providers (9-state) and \$46,000 to \$2 million for Tier 2 (Florida only)

⁴ Specifically, because of performance issues surrounding the timeliness in providing certain responses to CLEC requests, AT&T incurred significant and substantial SEEM liability in the

Release, AT&T issued almost \$1.5 million in proactive billing credits in the southeast region, including over \$245,000 in adjustments associated with Florida billings. Indeed, in its Audit Report, Staff concluded that “AT&T adequately responded to billing concerns that resulted from the April Release [and] believes AT&T’s actions have remedied the CLECs’ [billing] concerns.” Audit Report at p. 50. In sum, given the substantial payments that AT&T has already made in connection with the April Release, AT&T has more than ample incentive to implement the next 22-state release in a manner that minimally impacts CLEC operations. Accordingly, no modifications to the existing SQM/SEEM plan are necessary or appropriate because AT&T has sufficient existing incentive to deploy near flawless OSS releases.

II. Staff’s approach is not well grounded under Florida law.

A. In connection with the April Release, there is no evidence that AT&T Florida refused to comply with a Commission rule or order, nor is there any evidence that AT&T Florida willfully violated a Commission rule or order. Accordingly, there is simply no basis for the Commission to commence a show cause proceeding in connection with the April Release.

In their three-count complaint filed on May 12, 2008, Cbeyond, Deltacom, and Nuvox⁵ (collectively, “the Petitioners”) requested, among other things, for the Commission to “[i]ssue a show cause order to AT&T requiring it to explain in detail all the circumstances surrounding implementation of the OSS release and why it should not be penalized for its failure to appropriately implement the OSS release.” Complaint at p. 12. As part of an agreement wherein

areas of FOC timeliness, Reject Interval, and FOC and Reject Completeness. These SQM measures (and associated SEEM remedies) were designed specifically to identify and remedy areas where AT&T does not meet the performance standards outlined in the SQM/SEEM plan.

⁵ Originally, tw telecom was one of the Petitioners. tw telecom resolved matters with AT&T and withdrew from the complaint in September 2008. The Commission granted NuVox’s motion to intervene in the complaint in January 2009. Order No. PSC-09-00011-PCO-TP (issued January 5, 2009).

AT&T and the Petitioners agreed to allow the Staff to conduct an audit into the April Release in lieu of an audit conducted by an independent third-party, the Petitioners agreed (among other things) to hold in abeyance the Petitioners' "show cause" claim. See Attachment 1 to Order No. PSC-08-0618-PAA-TP, dated September 23, 2008 and Petitioners' Notice of Dismissal of Portion of Complaint and Motion to hold Remaining Portions of Complaint in Abeyance, filed on September 12, 2008.

Staff's Report examined and analyzed "the circumstances surrounding implementation of the [April] OSS release."⁶ Importantly, in its Report – which exceeds 100 pages – Staff makes no finding or observation that AT&T Florida refused to comply with, or willfully violated, any Commission rule or order in connection with the April Release. Accordingly, there is no statutory basis for the Commission to penalize AT&T Florida in connection with the April Release.⁷ As such, the "show cause" claim should be dismissed outright because there is simply no evidence or allegation that AT&T Florida refused to comply with, or willfully disregarded, any Commission rule or order in connection with the implementation of the April Release.

⁶ As set forth in its comments in response to the Audit Report, AT&T does not agree with all of Staff's findings and recommendations contained in the Audit Report. Nonetheless, AT&T recognizes that the Audit Report is the culmination of Staff's investigation of April Release issues.

⁷ Section 364.285, Florida Statutes, provides in relevant part that "[t]he commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter *which is found to have refused to comply with or have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000...*" (emphasis added). In its Order which created the SQM/SEEM plan (Order No. PSC-01-1819-FOF-TP (issued September 10, 2001)), the Commission specifically recognized that its power to penalize AT&T Florida (then known as BellSouth) derives from Section 364.285 and further noted that a lengthy "show cause" proceeding must take place prior to the imposition of any penalties. Order at pp. 122-128.

B. Proposed revisions to the SQM/SEEM Plan are improper in this context and should be considered, if at all, in the next periodic review of the SQM/SEEM Plan.

Staff's proposal is also inappropriate because proposed changes (if any) to the SQM/SEEM Plan should be proposed, considered, and debated in the context of a periodic review of the SQM/SEEM Plan. Indeed, the current SQM/SEEM Plan has been modified on many occasions via the periodic review process and there is no reasonable basis to side-step the review process in the manner suggested by Staff. This is particularly true here given Staff's recommendation in its Audit Report that the "Commission should commence an expedited review of AT&T's SQM and SEEM Plans prior to implementation of 22-state releases scheduled in 2009." Audit Report, at p. 5. Although AT&T Florida firmly believes that no SEEM additive is necessary to foster the implementation of near flawless future 22-state releases, the merits (or lack thereof) of such a proposal should be debated and discussed in the next periodic review of the SQM/SEEM Plan.

III. Many features of Staff's proposal are counterproductive.

AT&T's concerns with Staff's SEEM Additive proposal are not limited to its effectiveness or policy implications. AT&T is also concerned about how the proposal is constructed. As initially proposed, the proposal would require AT&T to pay double the required SQM/SEEM Plan payments on *all* measures, including measures unrelated to OSS, for six months, following the next 22-state release. The six month duration of the proposal is excessive, and without a total liability cap, the total dollar value is clearly confiscatory.

As explained above, Staff's proposal is unlikely to achieve its objective because the doubling mechanism, *payable for even a customary release*, is clearly punitive, rather than in the nature of an incentive. The SEEM Plan, which is the most stringent in any of AT&T's

regions, already exposes AT&T to significant risk for any results below benchmarks, which may themselves require better performance for CLECs than AT&T's own retail performance.. Any proposal that requires double payments for a customary release and which adds to the existing SEEM Plan, is counterproductive.

Moreover, if Staff's goal is to incent better performance in the next 22-state release, the proposal should be clear that it is *limited to the next 22-state release*. Additionally, network and other non-OSS/Ordering measures should be excluded from the proposal, since inclusion of unrelated measures will not help achieve that goal. In fact, inclusion of non-OSS/Ordering measures is likely to make achievement of Staff's goal less likely since AT&T would be required to devote resources to non-OSS related activities, such as network operations, to achieve near perfect performance and minimize a windfall for CLECs. Rather than striving to maintain nondiscriminatory processes for wholesale and retail, AT&T would be incented to prioritize CLEC work above its own retail end users. This is not sound policy and certainly not the intent of the 1996 federal Telecommunications Act. Any approach that targets measures other than those directly implicated in the next 22-state release (i.e.: OSS/Ordering measures)⁸ would be inconsistent with Staff's stated goal and the purpose of the audit.

The duration of Staff's proposal is also clearly excessive. AT&T understands that Staff chose six months because Staff wanted to tie the proposal to the perceived duration of the April Release impacts, as determined by looking at average SEEM payments from November 2007 through October 2008. Examining SEEM payments alone, does not provide an accurate indication of the duration of the April Release impacts. Although average monthly SEEM

⁸ PO-2 Loop makeup response time; O-2 Acknowledgement Message Completeness; O-3 Percent Flow-Through Service Requests; O-8 Reject Interval, O-9 Firm Order Confirmation Timeliness; O-11 Firm Order Confirmation, and Reject Response Completeness.

payments in the six months following the April Release exceeded average SEEM payments for the six months preceding the release, the higher SEEM liability after July 2008 is not indicative of April Release impacts, but is instead primarily a function of the punitive design of the SQM/SEEM Plan itself which multiplies SEEM obligations and adds Tier 2 liability for misses in successive months. In reality, the impacts of the April Release ended much sooner than the price AT&T was required to pay in terms of SEEM payments. CLEC-impacting issues were largely eliminated by June 11, 2008, when all notifications were properly flowing and backlogs in the centers had been cleared. Prior to the August OSS release, all severity 1 and 2 defects had been cleared. Severity 3 defects, which will be closed prior to the March 2009 OSS release, did not affect CLEC operations since effective interim processes were in place.⁹ Accordingly, Staff's rationale for six months is not supported by the facts. Based on Staff's apparent goal of estimating the time period it took to recover from the April Release, any recommendation beyond three months would be contrary to Staff's objective.

More importantly, Staff's proposed six month term does not make sense from an operational perspective. Imposing a SEEM Additive proposal for a six month period is likely to delay important OSS improvements slated for releases beyond the next 22-state release. Under AT&T's standard release schedule, three major releases are implemented each year at four month intervals, generally in March, July and November. The next 22-state release is currently scheduled for July 2009, but under Staff's proposal AT&T would continue to be subject to excessive SEEM liability in November 2009 when the next release is scheduled to be implemented. Rather than be exposed to double SEEM liability beyond the next 22-state release,

⁹ The last Severity 3 defect associated with the April 2008 release is a modification to the internal LSC LASR interface that will allow service reps to manually update the notification should a reason exist to modify and/or cancel and reissue a service order.

AT&T would have to seriously consider whether to simply cancel or delay the November release and push out even further the benefits to CLECs.

Staff's proposal is also problematic because it treats all performance that does not achieve the SQM/SEEM benchmark the same regardless of degree, and because it does not include a cap. A tiered approach, where payments for performance below the benchmark are tied to the level of performance would be less punitive. In the same vein a cap is crucial to the fairness. Without a cap, AT&T's exposure is excessive and unwarranted, particularly in light of the significant SEEM payments already required by the SQM/SEEM plan.

Further, there is no rationale for including Tier II remedies in the proposal. The existing SEEM plan alone is incentive enough, as explained above, but with Staff's SEEM Additive proposal, Tier II payments would also double, and would take as much as \$170,000 to \$6.8 million away from AT&T's potential investment funds without any benefit to CLECs.¹⁰

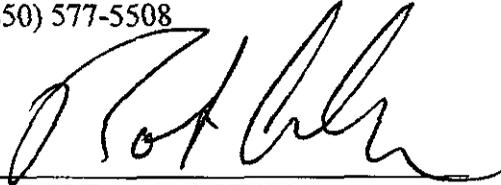
CONCLUSION

For the reasons explained herein, Staff should not move forward with its SEEM Additive proposal. The proposal is unnecessary, counterproductive, and if implemented, would be unlikely to achieve Staff's stated purpose of ensuring that future OSS releases are achieved without any major defects. Further, the Petitioners' "show cause" claim should be dismissed outright because there is no evidence whatsoever that AT&T Florida refused to comply with, or willfully violated, any Commission rule or order in connection with the implementation of the April Release.

¹⁰ These figures are based on the risk that the plan would spread to all Southeast states. The numbers for Florida alone are \$46,000 to \$2 million.

Respectfully submitted this 6th day of February 2009.

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A handwritten signature in black ink, appearing to read "Robert A. Culpepper", written over a horizontal line.

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