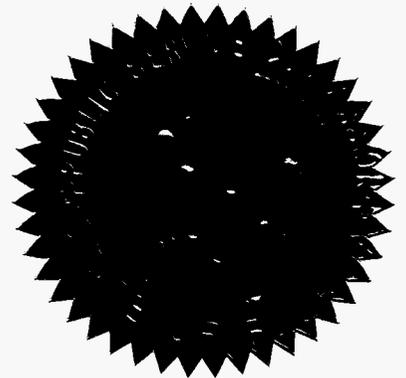


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000121A-TP

In the Matter of:

INVESTIGATION INTO THE ESTABLISHMENT
OF OPERATIONS SUPPORT SYSTEMS PERMANENT
PERFORMANCE MEASURES FOR INCUMBENT LOCAL
EXCHANGE TELECOMMUNICATIONS COMPANIES.
(AT&T FLORIDA TRACK)



PROCEEDINGS:

AGENDA CONFERENCE
ITEM NO. 10

BEFORE:

CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE:

Tuesday, March 3, 2009

PLACE:

Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY:

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Official FPSC Reporter
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1 PARTICIPATING:

2 TRACY HATCH, ESQUIRE, and JOHN SMITH, representing
3 AT&T and AT&T FLORIDA.
4 Communications, LLC.

5 VICKI GORDON KAUFMAN, ESQUIRE, and MS. CONQUEST,
6 representing Cbeyond, Deltacom, Nuvox and Competitive Carriers
7 of the South.

8 ADAM TEITZMAN, ESQUIRE, and LISA HARVEY representing
9 Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN CARTER: We are back on the record. And
3 when we left, we had just completed Item 6. And now,
4 Commissioners, we are on Item 10.

5 Staff, you're recognized.

6 MS. HARVEY: Commissioners, Lisa Harvey with staff.

7 On August 5th, 2008, the parties in this docket
8 entered into a stipulation that an audit be conducted by staff
9 of the AT&T failures associated with the OSS software release
10 that occurred in April 2008. The Commission approved the
11 stipulation in September.

12 The purpose of the audit was to determine if
13 appropriate and adequate measures have been undertaken to
14 prevent CLEC impacting issues with future releases. The audit
15 report was completed in January 2009, and contains eighteen
16 recommendations for improvement.

17 There were two issues in the original petition by the
18 parties that were held in abeyance until the conclusion of the
19 audit. The first issue was whether AT&T should be allowed to
20 move forward with the next OSS software release that effects
21 the 22 states. The second issue was whether the Commission
22 should initiate a show cause proceeding.

23 On December 5th, as the audit was drawing to a close,
24 staff held an informal conference with the parties to discuss
25 the proposal by staff to double the SEEM remedies as a way to

1 settle this petition. The parties were asked to negotiate this
2 issue. After almost two months, no settlement was reached by
3 the parties. On January 28th, 2009, staff requested written
4 comments from the parties regarding the SEEM doubling proposal.
5 The comments were filed February 6th, and as a result of
6 staff's review of the comments, staff modified its SEEM
7 doubling proposal to target selected metrics, or selected SEEM
8 metrics. The modified proposal is what is included in staff's
9 recommendation today.

10 Staff recommends that AT&T be allowed to move forward
11 with the next 22-state release under the condition that
12 selected Tier 1 and Tier 2 remedies are doubled for a six-month
13 period beginning with the next 22-state release. The
14 performance measures to be doubled are limited to those in the
15 preordering, ordering, provisioning, and change management
16 domains, and are those which would be directly impacted by the
17 next release.

18 Staff believes this doubling is necessary since the
19 current SEEM plan did not deter implementation of a flawed
20 release in April and may not adequately defer future release
21 issues. After implementation of the next 22-state release,
22 staff will recommend whether additional action is necessary.
23 The next release is currently scheduled for July 2009.

24 Commissioners, you have previously been provided a
25 red folder which contains the confidential version of staff's

1 audit report. The language which is requested as confidential
2 has been shaded in that report. Staff is available for
3 questions, and parties in this petition are here to address the
4 Commission.

5 CHAIRMAN CARTER: Okay. Let's hear briefly, briefly
6 from the parties.

7 MR. HATCH: I believe it is the CLECs' petition, so
8 it is probably appropriate that they go first.

9 CHAIRMAN CARTER: You may proceed.

10 MS. KAUFMAN: Good morning, Mr. Chairman,
11 Commissioners. I am Vicki Gordon Kaufman; I am with the law
12 firm of Keefe, Anchor, Gordon, and Moyle here in Tallahassee,
13 and I'm appearing on behalf of Cbeyond Communications LLC,
14 DeltaCom, Inc., and NuVox Communications, Inc., who are the
15 petitioners in the complaint here. And I am also here on
16 behalf of the Competitive Carriers of the South, Inc., who
17 support the comments of the petitioners.

18 I don't have a problem going first, but I would like
19 to reserve some time for rebuttal, if that would be all right
20 with the Chair.

21 CHAIRMAN CARTER: Probably not. Let's get it on out
22 there. Let's roll.

23 MS. KAUFMAN: All righty.

24 As Ms. Harvey said, in April 2008, after the
25 AT&T/BellSouth merger, AT&T began attempts to combine its

1 various OSS systems. And I think as we talk about this item
2 it's important to understand that these systems are the way
3 that CLECs preorder, order, provision, and maintain service to
4 their retail customers. So these systems are absolutely
5 critical to the CLECs' ability to serve their customers, and
6 their appropriate functioning, I don't think, can be
7 overemphasized.

8 So this release -- we have called it the April
9 release -- happened on April 19th, and I don't think that it's
10 an overstatement or hyperbole to call the release a disaster.
11 Petitioners here as well as many other CLECs experienced severe
12 impacts to their ability to request and to provision service to
13 their customers. They couldn't process customer requests, they
14 didn't receive firm order commitment dates, they didn't receive
15 requests for order clarification, disconnect notices,
16 rejections, they didn't receive communications as to when to be
17 at their customer premises for installations. There were
18 problems with the manual ordering systems, as well. And,
19 finally, AT&T's personnel was totally and wholly unprepared to
20 deal with the magnitude of all the errors that occurred.

21 Just as an example, Cbeyond, one of the petitioners
22 here, had over 350 orders impacted by this release. In your
23 order where you approved the staff audit, you noted that over
24 200,000 billing completion notices and 12,000 completion
25 notices were not delivered to CLECs, and that about 71,000

1 orders in the region were impacted. So I just want to
2 emphasize, this wasn't a small glitch. This was a major
3 debacle. And as a result, as Ms. Harvey said, the petitioners
4 filed a complaint and asked you to stay any future releases,
5 conduct an independent audit of what had occurred, and
6 institute a show cause proceeding against AT&T to figure out
7 what in the world had happened here. And the parties
8 subsequently agreed that staff rather than an independent
9 auditor would conduct the audit of the release.

10 Your staff conducted a very thorough audit that I
11 know you have before you, and as AT&T pointed out, they
12 reviewed thousands of pages of documents, they interviewed many
13 AT&T employees, and we applaud the thoroughness of the audit
14 and the hard work that your staff did to bring you this
15 comprehensive product.

16 So after conducting this comprehensive audit, your
17 staff told you, and I quote, that the audit was a critical
18 failure. Not the audit, I'm sorry, that the April release was
19 a critical failure. Excuse me. Sorry, staff.

20 If you look at Attachment A of the -- which is to the
21 recommendation, which is the audit itself, and as Ms. Harvey
22 said, you have got the confidential version. I'm not going to
23 need to refer to any confidential information. Your staff
24 found, and I quote, there appeared to be a general lack of
25 understanding of the magnitude and complexity of the conversion

1 effort on the part of AT&T management from the beginning.
2 Failures were evident in AT&T's planning, organizing,
3 directing, and control of this project, close quote.

4 On Page 3 of the audit, staff says, "Never before had
5 AT&T ever encountered defect management problems such as those
6 resulting from the April release. The scope of defects
7 encountered overwhelmed its ability to comprehensively respond
8 in a timely manner and resource fatigue eventually became a
9 problem multiplier. The scope, volume, and magnitude of --
10 there is a confidential number there -- production defects
11 exceeded AT&T's experience, expectations, and ability to
12 adequately respond. Problems with the defect management
13 process exacerbated the situation."

14 Staff goes on to note that defect tracking
15 management, which is, of course, important in any kind of a
16 release, from methodology to remediation was often
17 uncoordinated; defects were captured in different applications
18 that did not share common architecture or an ability to
19 communicate; disparate systems delayed the full comprehension
20 of problems and subsequently hindered management response;
21 duplicative entries in two systems led to varying but
22 continuing levels of confusion about specific responsibilities;
23 the inability of various defect tracking systems to communicate
24 or crosspopulate denied management valuable analysis tools with
25 which to easily and efficiently discern preproduction and

1 production defect trends.

2 And staff also says, "Prioritization of defects was
3 impaired, allocations of resources was impacted, and
4 remediation arguably delayed in some instances. Though AT&T
5 stated the defect analysis tools worked as designed in each
6 region, some managers allowed that input errors and user
7 oversight precluded optimum performance. The number of defects
8 resulting from the April release, particularly those of the
9 most critical severity type quickly outstripped AT&T's ability
10 to immediately respond in a proactive, comprehensive, and
11 systematic manner."

12 And I think this is one of the critical findings that
13 your staff says, "Staff believes the company grossly
14 underestimated the quantity, scope, and severity of defects
15 that might be encountered with this release." And obviously
16 those are just some small excerpts from this large document,
17 but I think they summarize the point I made earlier which was
18 that this wasn't a small glitch. This was a large failure, and
19 the failure resulted from AT&T's action or inaction in regard
20 to their failure to appropriately test and vet this release
21 before they put it out there. And it had a severe impact on
22 the CLECs and their customers. So, that --

23 CHAIRMAN CARTER: Are you about to wrap up, Ms.
24 Kaufman?

25 MS. KAUFMAN: No, Mr. Chairman.

1 CHAIRMAN CARTER: I think you are.

2 MS. KAUFMAN: Well, let me try to talk quickly, if I
3 might. I wanted to give you some background from the CLEC's
4 perspective.

5 CHAIRMAN CARTER: I mean, we have got -- most of what
6 you are saying we have in front of us, so just wrap it up.

7 MS. KAUFMAN: I understand.

8 Well, that brings me to the heart of why we are here
9 today, which is what you should do to remedy the situation.
10 And we agree with your staff that you have to send a clear
11 message to AT&T that conduct such as we saw with the April
12 release won't be tolerated and this kind of impact on
13 competitors cannot occur again.

14 So we agree with your staff that AT&T has to be
15 accountable in a material manner for future releases in regards
16 to the functioning of OSS. And we agree with your staff that
17 AT&T has made lots of promises that we can't verify, but more
18 importantly your staff can't verify. So we support the
19 doubling of SEEM as an incentive to AT&T, but we think it
20 should apply to all the SEEM metrics as your staff discusses in
21 the beginning of the recommendation.

22 And, in addition, as we said in our comments, we want
23 to see some additional metrics added to Tier 1, and those would
24 be CM-1, CM-3, CM-6, and we would like to see LASR added to the
25 OSS to interface availability metric. We disagree with staff

1 that these are outside of the audit and they think that they
2 should be included in the plan. We agree also that our show
3 cause should remain pending until we see what happens with the
4 next big OSS release, which I understand AT&T has said will
5 occur in July.

6 Let me touch just for a moment, Mr. Chairman, on
7 AT&T's comment that our --

8 CHAIRMAN CARTER: Please be brief, Ms. Kaufman,
9 because we do -- the Commission itself has some questions and
10 concerns, and we would like to get to our discussion, as well,
11 so please be brief.

12 You're recognized.

13 MS. KAUFMAN: I was just going to say that we
14 disagree with AT&T's position that our show cause should be
15 dismissed. I think you have stated many times that a willful
16 violation can occur from action or inaction, and I think what
17 we have seen here is gross inaction on AT&T's part in vetting
18 this April release.

19 AT&T's comment to you that we should all trust them
20 in regard to the next release, I think should be rejected. I
21 think they need some clear incentives out there. And AT&T's
22 further position that, gosh, this might cost us some money also
23 should be rejected, because I think as your staff said at Page
24 9, their obligations under the Telecommunications Act to
25 provide nondiscriminatory access to OSS cannot be obviated and

1 they need to have a clear message from the Commission that what
2 happened in April will not be permitted to happen again.

3 So we support the staff's recommendation with the
4 additions that I have mentioned.

5 Thank you, Mr. Chairman.

6 CHAIRMAN CARTER: Thank you, Ms. Kaufman. That was
7 brief. Thank you.

8 Commissioner Skop, you're recognized.

9 COMMISSIONER SKOP: Thank you, Mr. Chairman.

10 Just some questions for Ms. Kaufman. Certainly you
11 are not suggesting that this was a willful effort by AT&T?

12 MS. KAUFMAN: Well, Mr. Chairman, I'm suggesting that
13 under the standard --

14 COMMISSIONER SKOP: Excuse me, I'm not the Chairman.

15 MS. KAUFMAN: I'm sorry, I have just got -- Mr. Skop,
16 Commissioner Skop, I'm am suggesting that this inaction on
17 AT&T's part, yes, falls within your show cause authority. And
18 I think you said, for example, in your Verizon show cause that
19 action as well as inaction qualifies for a show cause.

20 COMMISSIONER SKOP: I would quantify something as
21 willful of being of one's own volition and of malicious intent
22 as opposed to perhaps underestimating the magnitude of the
23 conversion process resulting from the, you know, various
24 integration problems that occurred across a platform. But I
25 guess, let me just move on.

1 It is my understanding that the CLECs have already
2 been compensated pursuant to the SEEM payments that are in
3 place for the problems that happened during the release and
4 under the -- I believe it was Tier 1 payments, if I am correct.

5 MS. KAUFMAN: Well, I believe that AT&T made the Tier
6 1 payments under the SEEM Act, but I think what we are talking
7 about here is an incentive. I'm sorry.

8 COMMISSIONER SKOP: I'm looking at the past, and
9 we'll talk about the future in a second. But the CLECs have
10 already been compensated under Tier 1 for the misses that
11 AT&T -- the contractual obligations that AT&T had to the CLECs,
12 is that correct?

13 MS. KAUFMAN: Well, I don't mean to be argumentative,
14 but I guess I take issue with the word compensated. The
15 penalties or the remedies have been paid under the SEEM plan.

16 COMMISSIONER SKOP: Okay. The remedies have been
17 paid under the SEEM plan --

18 MS. KAUFMAN: As far as I know.

19 COMMISSIONER SKOP: -- and the CLECs have other legal
20 remedies currently available to them, is that correct?

21 MS. KAUFMAN: That's my understanding.

22 COMMISSIONER SKOP: Okay, great. So I think where we
23 are at is that we need to prevent reoccurrence of this problem
24 from happening in the future. And, again, you know, coming
25 from major industry, we did a similar program at Boeing where

1 we decided that we were going to standardize the design and
2 construction of airplanes across a computer system, and that
3 was a major failure, too, when it happened.

4 So, again, sometimes things that are done in the best
5 intentions with a lot of effort put for them always don't work
6 as planned. And, you know, anyone that has experienced the
7 blue screen of death on a Microsoft product often knows it's
8 hard, even with the best efforts, to get things right the first
9 time.

10 So, again, it doesn't diminish the integration
11 problems that were associated with the conversion process as
12 has been duly noted by staff, and Ms. Kaufman has pointed out,
13 it's a critical failure resulting in severe impacts to the
14 CLECs. It's my understanding that third-party providers use
15 for the OSS release and, you know, some remedial action has
16 been taken to the extent that software testing and additional
17 quality control assurance measures.

18 But, again, I think what the Commission needs to
19 do -- and, again, I don't want to speak for all of my
20 colleagues, but obviously that the integration here is across
21 platform integration. Not everything can be anticipated. Was
22 it a disaster? Probably. So, again, what are we to do on a
23 forward-going basis to correct the problem? What I view it as,
24 and, again, I'm referring to the 12-month Tier 1 and Tier 2
25 remedy chart that staff has prepared. If you look at the

1 release which was apparently mid-April 2008, the payments went
2 up exponentially due to the SEEM remedies that were available
3 as a result of deficiencies in the release, and apparently it
4 took about two months for those to show some improvement in
5 terms of working through those problems.

6 It's my understanding that a lot of the placements
7 for orders and such just went into, you know, a black hole for
8 lack of a better word, and weren't found and it took some time
9 to catch up with those glitches that were inherent in the
10 software release. But at the end of the day, I think that, you
11 know, you want to encourage the integration process to become
12 streamlined such that it's a uniform tool across all of the
13 respective states. And I would look at, you know, the need to,
14 again, prevent reoccurrence of a problem of a similar
15 magnitude, but also not a remedy that would be so harsh that it
16 would be a disincentive or have a complete chilling effect to
17 implementation of future OSS releases.

18 And I think that, you know, I would like to commend
19 our staff for all the hard work. I think that they have
20 offered something that is reasonable. But I think that my
21 suggestion would be, you know, based on the graph, if a
22 doubling were in order that it would be for a shorter period of
23 time, not something that would span probably two releases. I
24 guess they have two upcoming releases in July of this year, and
25 then I think November. And a six-month period would kind of --

1 if I were AT&T, I would put the brakes on all releases if that
2 happened to me. I just wouldn't risk that chance because, I
3 mean, there is no penalty if you don't do a release. There is
4 only downside if you do a release, so it would take more time
5 and delay future releases.

6 So, again, I'm open-minded to discussing what the
7 appropriate remedy would be, but if I were to move forward
8 towards supporting a staff recommendation, it would probably be
9 for a two-month rather than a six-month time. Thank you.

10 CHAIRMAN CARTER: Commissioners, any questions?

11 Commissioner Argenziano, you're recognized.

12 COMMISSIONER ARGENZIANO: Thank you.

13 In staff's analysis, I was just wondering if they
14 could just elaborate a little bit more on the eighteen
15 recommendations that you felt that AT&T had not given adequate
16 attention to. You know, some of the specifics. I believe that
17 gave you some discomfort?

18 MS. HARVEY: Commissioner, on Page 3 of the report
19 there is a list of six recommendations that have to do with the
20 key learnings process that they went through. Staff believes
21 that the key learnings process is a good process; however, we
22 found on several occasions situations where they had not
23 satisfactorily implemented all the findings that they
24 identified.

25 We had situations where we found that they had not

1 adequately conducted a root cause analysis of those findings,
2 and we also found that there were situations where we are not
3 sure that they had truly implemented all the fixes that they
4 had identified.

5 COMMISSIONER ARGENZIANO: So, basically you are just
6 uncomfortable with feeling that they hadn't really addressed
7 the issues.

8 MS. HARVEY: Yes.

9 COMMISSIONER ARGENZIANO: Okay. And also if I can
10 ask AT&T to respond.

11 CHAIRMAN CARTER: Mr. Hatch.

12 MR. SMITH: John Smith, AT&T.

13 I have the responsibility for wholesale support,
14 including these OSSs. In terms of the root cause effort that
15 we put into play with our IT organization, it was very much a
16 bottoms-up effort. We opened it up to all of the developers,
17 all of the personnel that were involved in this, and we
18 solicited their input, all of their input, not only what
19 they -- you know, the facts that they had, but how they felt
20 about what issues there were in their scope. What worked, what
21 didn't work. So we got a lot of information, 356 key
22 learnings.

23 But through that process, what we found was that in
24 some cases I think what staff had available to them, which was
25 a lot of information to crunch in a very short period of time,

1 was not the finished package. We feel like that of those 356
2 different key learnings that we have materially, if you will,
3 closed either because there were things that were addressed, or
4 they were more, if you will, innuendo than fact-based when we
5 did fact-based review, so we feel that we have significant
6 information from this release with which to improve our
7 processes.

8 CHAIRMAN CARTER: Thank you.

9 I just wanted to kind of piggyback with staff on what
10 Commissioner Skop had said. It does seem intuitive that there
11 is -- if you want to upgrade the system, you know, which
12 everyone needs to have done is fine, but if you discover a
13 problem then you get penalized, so that is a disincentive to
14 upgrade the system.

15 Do you remember when Commissioner Skop was talking
16 about that? It does seem to be the case. Do we want to
17 discourage development and innovation or --

18 MS. HARVEY: No, absolutely not. We do not want to
19 discourage innovation, or we do not want to discourage them
20 from moving forward with the next release. However, I will
21 suggest to you that perhaps that the current SEEM plan, which
22 was modified in late 2005 or early 2006, the actual
23 calculation, how the structure of the calculation was
24 performed, and that modification resulted in a decrease in the
25 dollar value of the payments that were typically made to CLECs

1 and to the state of Florida.

2 I believe there was, like, an over 80 percent
3 decrease in the amount of dollars that were paid to CLECs.
4 There was over a 36 percent decrease in the amount of dollars
5 that were paid to the state of Florida.

6 CHAIRMAN CARTER: And what was the basis for that?

7 MS. HARVEY: I'm concerned that the significant
8 decrease in how the structure of the SEEM plan was identified
9 has resulted in less incentive to AT&T.

10 CHAIRMAN CARTER: And the basis for that, for the
11 decrease?

12 MS. HARVEY: It was a modification that was requested
13 by AT&T where we were going from a different approach, from a
14 metric-based approach to a transaction-based approach, and now
15 they pay per transaction, whereas before they were paying on a
16 different basis.

17 CHAIRMAN CARTER: Okay. Describe the differences
18 between the bases in terms of why going from one to the other
19 there was such a dramatic disparity, if you can.

20 MS. HARVEY: I really can't get into the details of
21 it, that wasn't my bailiwick, but it did result in a
22 significant change in the payments.

23 CHAIRMAN CARTER: Okay.

24 Commissioner McMurrian.

25 COMMISSIONER McMURRIAN: Just a follow-up on what you

1 were talking about there, and I think we talked about this some
2 yesterday. At the time we did that back in 2005, that was
3 before BellSouth and AT&T had merged into this 22-state
4 operation. So at the time -- so now when we are talking about
5 releases, they are releasing things over 22-states, and it has
6 got to be more -- I'm not trying to excuse it, and we will get
7 back to what is before us, but since you brought that up, I
8 think it is important to point out that we were at a very
9 different time in the company's history then. So I don't
10 remember exactly what all the basis was for reducing them. I'm
11 sure it was AT&T brought it before the Commission and they
12 were -- and felt like that was the right thing to do at the
13 time.

14 But, again, I don't think that you can draw a
15 parallel, and I'm not saying you definitely were, Ms. Harvey,
16 but I don't think you can necessarily say that because they
17 were reduced back in 2005 when the situation was so different
18 that that in some way led us to problems we have now. I think
19 the problems we have now -- you at least have to factor in that
20 it is much more difficult with a 22-state region, I think, or
21 at least trying to get to where it is more uniform across a
22 22-state region.

23 But, Mr. Chairman, I also do want to hear from the
24 other side, too. I don't think we have heard from them yet.

25 CHAIRMAN CARTER: That's right. We did not give an

1 opportunity for AT&T to be heard. Let's do that at this point
2 in time.

3 Mr. Hatch, you're recognized.

4 MR. HATCH: Thank you, Mr. Chairman. Tracy Hatch
5 appearing on behalf of AT&T Florida.

6 The discussion sort of has overcome a lot of stuff,
7 but let me sort of circle back to a starting point. We are
8 here really talking about the SEEM process. The SEEM process
9 is a self-enforcing, or self-effectuating enforcement
10 mechanism. By design it is an automatic process. It is
11 punitive in nature, it is punitive by design so that if we
12 miss, we pay. We pay both the state under Tier 2 and we pay
13 the CLECs under Tier 1. It is a punitive process, make no
14 mistake.

15 What staff is proposing to you today is just make it
16 a vastly more punitive process. But the rationale that they
17 are using to justify the increase in the punitive levels,
18 basically we believe is flawed. We do not believe it is
19 necessary and we think that you should reject it.

20 You sort of talked about this already, but one of the
21 things that is really important here, and staff touched on
22 that, Mr. Smith touched on that, is that we have, as a result
23 of the April release, gone through an inordinate process in
24 terms of discovering what went wrong, why it went wrong, and
25 what can we do to fix it. We have put in place a number of

1 what we believe are improved processes that we believe will
2 avoid this kind of problem in the future.

3 And it's critical to note that this problem has never
4 occurred before. This is the first time. Hindsight is always
5 wonderful, you wish you could go back and do a do over; but,
6 unfortunately, we can't. All we can do is react to what
7 happened and put in place those things we believe will fix what
8 went wrong.

9 We believe we have done that. One of the things that
10 the staff recommendation fails to show you is that since the
11 April release we have undergone two major releases. Those two
12 major releases have been, as much as you can in a process as
13 complicated as this, has been nearly flawless. And so you
14 don't have to trust our promises that we have fixed things, you
15 can look at what we have done subsequent to the April release
16 and put stock in what has actually happened.

17 Those two releases went off exceptionally well. They
18 were nowhere near the magnitude of problems that you see here
19 or that you saw in the April release. It's important to note
20 that those two releases were based on the changes in the
21 process that we made. It's also important to note that in any
22 future releases the same processes and the same people that
23 handled the two flawless, if you will take the term, releases
24 are the same people and the same processes that will be used
25 for future releases. So you can take some stock and faith in

1 the fact that we have shown we have fixed the problem and that
2 we don't anticipate, nor should you anticipate any further
3 kinds of flaws like the April release.

4 Now, one of the things that the staff bases its
5 request to increase punitive nature of SEEMs is that they want
6 AT&T to be held materially accountable. We are accountable, we
7 have been accountable, we have showed that we have been
8 accountable in our two prior releases. But, more importantly,
9 to understand, I think, is that the total -- as the staff
10 points out in its recommendation, the total SEEMs payments to
11 CLECs and to the states in the nine southeast states was a
12 little over \$16 million.

13 If that is not materially accountable, I'm not sure
14 what is. There is almost \$5 million just in Florida alone. If
15 there is any incentive needed other than the incentive just to
16 do good and make your processes efficient for everybody,
17 including our customers, and, yes, we do believe the CLECs are
18 our wholesale customers, the SEEM process already creates the
19 incentive. No additional incentive is necessary, as you can
20 see by what we have already done. I'm trying to be brief here.

21 With respect to the proposed process, the proposed
22 additive that staff wants, there is some flaws in it in and of
23 itself. Even as they have modified it, there is still some
24 problems with it. Essentially, the six-month duration is
25 premised on the fact that in staff's view it took us six months

1 to recover. The reality is, as was noted earlier, we cleared
2 all the CLEC-affecting issues by early to mid-June. You are
3 talking a two-month period. So the SEEM payments that extended
4 out are as a result of the backlog, and it is just taking its
5 way to work it through the process. But the CLEC-affecting
6 issues were cleared out by June.

7 The other flaw in it is that there are no triggers.
8 I could have a flawless release, but if there is one defect in
9 the measures that staff wants to impose a double penalty on, I
10 still get punished. Even if it's a flawless release by any
11 one's standard, the CLECs or our own. If there is one miss, I
12 still get a double penalty. Where is the incentive in that? I
13 mean, that goes back to Commissioner Skop, and yourself, Mr.
14 Chairman; it is almost a disincentive to move forward. Do I
15 expose myself to that additional risk of having to pay double
16 SEEMs even though I have done everything I can and I have
17 demonstrated that the processes should work well going forward.

18 One thing you can also take comfort in is as a
19 results of our commitments to the staff and the suggestions
20 from the staff early on in the process is when we move to the
21 next release, the interfaces that they are using today will
22 remain up and running, so that when we implement the new
23 interface they can move forward. Under their old interface
24 they could do production testing under the new interface. They
25 won't have to move to the new interface until they are happy

1 that it works fine. That is a safety mechanism that we have
2 built in. That was not present in the last one, but that is
3 something we have done to assure that the problems to the CLEC
4 will be minimized to the extent possible. So there is no
5 danger to them in the new release in the sense that they stay
6 on their old interfaces until -- if there are bugs we have
7 worked those bugs out.

8 Now, I guess to the last important point that I'll
9 move on to is the last item that the CLECs want -- as far as
10 the petition, they asked for three things. Two of them have
11 already been accomplished, the last one is the show cause. We
12 don't believe while you can arguably say there was a basis for
13 a show cause when the CLECs filed their petition relative to
14 the staff's investigation and the audit, we don't believe that
15 there is any basis any longer for any show cause order.
16 Leaving it hanging out there, begs the question show cause for
17 what? Show cause for our past behavior in the April release
18 after we have done subsequent releases, or is the show cause
19 hanging over our head for future releases? If there is a
20 problem with a future release, the Commission has the
21 discretion at any time to impose a shows cause order. There is
22 no need to leave it hanging over our head like a sword of
23 Damocles.

24 More importantly, other than today, the CLECs have
25 not come forward with an allegation that we have willfully

1 refused to comply with any Commission rule, statute, or order.
2 There is a willful component to a show cause punishment. There
3 has been no allegation other than the bare allegation that they
4 suffered harm.

5 Now, all the CLECs here present in the petition, they
6 all have interconnection agreements. Under those contracts
7 them all have remedies. As Ms. Kaufman said, they have
8 remedies. To date more than ten months after the release, none
9 of the CLECs have come forward with any specific allegations of
10 any level of harm. All they have said is we were hurt, you
11 need to punish them.

12 I think that with respect to the CLECs and their wish
13 for a show cause, let them put up or shut up. If they have a
14 claim for harm, then let them push forward with that. What
15 they are attempting to do here is enlist the Commission in
16 their aid and have the Commission prosecute their case for them
17 under the guise of a show cause when we believe that that is
18 inappropriate.

19 We are here to answer any questions you have. We
20 will be happy to do so. Both Mr. Smith and Mr. English are
21 here to help with any technical details. I thank you.

22 CHAIRMAN CARTER: Thank you.

23 Commissioner Skop.

24 COMMISSIONER SKOP: Thank you, Mr. Chairman.

25 I just wanted to go back to some of the comments that

1 Mr. Hatch had mentioned. And, again, I share Mr. Hatch's view
2 that the SEEM payments are punitive by design. It's a punitive
3 process, as he stated, according to the graph that staff has
4 provided. And, again, I do commend staff for their work on
5 this, that most of the problems were cleared within the first
6 two months.

7 The one question I had, or the disagreement I would
8 have in terms of a statement, and I would look to our staff,
9 because I think that they were having some concerns with the
10 same statement with respect to the two past releases. I guess
11 our staff, and I can look to them, but I just want to go back
12 to Mr. Hatch. It's my understanding that the past two releases
13 were not of the same magnitude or the magnitude as the April
14 release of the OSS in terms of the problems, the magnitude. I
15 mean, maybe they are glitch fixes, but, again, I think at least
16 from what I have heard from our staff is that's not the case.
17 And I just want to clarify that for the record.

18 MR. SMITH: Yes, sir. John Smith, again. I would
19 agree that the August and November releases are not the same
20 scope of development work that the April release was. But
21 where we are coming from is that some of the steps we've taken
22 to remediate the problems that we had, and clearly we did have
23 problems, and we acknowledge that, and we take full
24 responsibility for that. I personally have been in this
25 organization serving this client set for many years, and I can

1 tell you that I am in no way here to defend our product for the
2 April release. But what we did do was take steps in expanded
3 testing, focusing specifically on the areas that we found the
4 most problems with as a result of that release.

5 We have also taken steps, as staff's report
6 acknowledges, in the coordination and planning efforts that we
7 had across multiple vendors, which we had more vendor
8 engagement in this release than we have had in past releases of
9 this nature where we have done merger work. And we have done a
10 lot of merger work. I have been in this area since
11 Southwestern Bell. I have seen us merge with PacificTel, with
12 Ameritech, with AT&T's Legacy T, and then with BellSouth. And
13 I'm not excusing what happened, I'm not using that as an
14 excuse, but we have learned that we had some issues there in
15 that coordination and we have taken steps to remediate that.

16 What is key about August and November and even
17 upcoming the March release, is that we have used those as
18 building blocks to implement some of those controls. We took
19 August and we implemented basic controls and basic
20 communication steps. In November we extended that. We did
21 more of our expanded testing with the November release, so we
22 could actually utilize the production opportunity to put the
23 controls in place.

24 In March, we're doing more cooperative testing with
25 the CLECs, particularly a third-party provider where we can be

1 intrusive with them from what they see on their side of the
2 interface instead of just relying on the results as we test
3 them on our side, which was an issue that we had with the April
4 release admittedly. So that's where we see the significance,
5 and where we would say that you don't have to just accept us
6 and trust in us what we say, but we have taken actual steps.

7 COMMISSIONER SKOP: And I appreciate that. I mean,
8 again, coming from the corporate world and seeing some software
9 roll out. I have seen the good, the bad, the ugly. But just
10 getting to one point -- and, again, I think Mr. Hatch brought
11 this up, because this may change my thinking completely on what
12 we do on a forward-going basis, but I think Mr. Hatch made the
13 comment that in terms of the CLECs for the next release, again,
14 because as I think as Chairman Carter has pointed out, there
15 shouldn't be disincentives to implementation of releases that
16 improve internal processes with the company and make things
17 more streamlined for everyone involved. It's only when, you
18 know, critical failures occur that it causes carnage throughout
19 the entire process that I think people get their feathers in a
20 ruffle.

21 But if I understood Mr. Hatch correctly is that the
22 CLECs have the opportunity to make a conscious choice whether
23 to migrate to the next release or not. So, for instance, very
24 analogous to happens in the corporate world, if I am an
25 enterprise software customer like Boeing, and Microsoft comes

1 out with a new operating system like Windows Vista, and I have
2 some significant concerns as the chief information officer as
3 to whether that system is going to be fully operational and
4 functional and have all the features without crashing all the
5 time. I could take a wait-and-see approach, and wait a couple
6 of years until after they issue service pack one, two, and
7 three, before I migrate to that operating system. So, does the
8 same hold true in this case for future releases? Are the CLECs
9 able to make that conscious decision to the extent that they
10 are not forced into going to the next release if they don't
11 have confidence in it?

12 MR. SMITH: In the April release, one of the issues
13 that we had admittedly was around a manual e-mail order process
14 which processes a smaller number of order types. But
15 nonetheless, we didn't have a, if you will, parallel option.

16 One of the things that we have taken steps in our
17 planning to ensure is that when we implement the July release,
18 which is when we change one of our largest customer interfaces
19 called XML, that there will be that capability that they can
20 stay on the, if you will, preceding version, which then will
21 not change their customer experience.

22 They actually, when we roll out this next release,
23 could test orders in production on the new version before they
24 switch all of their primary order processing from the prior
25 familiar version. In the following and final release where we

1 change out the web-based ordering interface, we will also
2 provide both the new ordering interface in parallel with the
3 old ordering interface for a period of time, six months, so
4 that there is that opportunity that they have. And I do think
5 that's one of the significant differences in how we are
6 planning forward and where we were with the April release.

7 COMMISSIONER SKOP: And I think that's a good thing.
8 I mean, again, speaking from past experience, I mean, that is a
9 tremendous lesson learned that often a lot of companies don't
10 follow and, you know, find out the hard way. And I can cite
11 Boeing for doing that. Again, we went live and we didn't have
12 a backup process, and you need that backup process the legacy
13 way in parallel. The University of Florida when they went to
14 PeopleSoft, they didn't have a process, and the software system
15 didn't work, and they didn't have the backup process because
16 they were so committed to going live that no one got paid for
17 months and months and months. Student assistants and teachers
18 and people weren't too happy with that. But, again, on a
19 forward-going basis, I think that solves a tremendous lesson
20 learned.

21 Again, I'm not sure what the will of the Commission
22 will be in terms of what the appropriate go forward is, again,
23 but the flexibility to migrate, the flexibility to, you know,
24 maintain a legacy system or at least a way of doing things
25 before you are forced to cut over to a new system that may or

1 may not have glitches in it that are not fully refined, I
2 think, is a protective measure that encourages innovation while
3 at the same time protecting some of the concerns raised by the
4 CLECs.

5 And, again, the existing SEEM mechanism isn't going
6 away. They are still going to get compensated for failures.
7 It is just a question of, you know, does a doubling provide
8 that disincentive to future improvements or refinements to the
9 OSS releases. So, again, I think that that last part makes me
10 a little more openminded towards questioning whether doubling
11 is the appropriate remedy, if at all, to the extent that you
12 already have a framework in place.

13 But, again, I would not look favorably upon any
14 reoccurrence of a critical failure on a future release. So, it
15 may be something where, you know, again, my own personal
16 opinion, not to speak for my colleagues, but, again, I think
17 most of the problems were cleared within a two-month period, so
18 arguably I think a case could be made for a doubling for a
19 period of two months, not six. But, equally, I could see a
20 case being made arguably for no doubling at all based on a good
21 faith effort, but knowing full well that if there is a critical
22 failure again, there could be some significant ramifications
23 and repercussions associated with that. So I will just turn it
24 over to my colleagues.

25 Thank you.

1 MS. KAUFMAN: Mr. Chairman -- I'm sorry,
2 Commissioner -- I wonder if Ms. Conquest from NuVox might be
3 permitted to address some of the operational issues that
4 Commissioner Skop discussed with Mr. Smith? Ms. Conquest is
5 from NuVox, and is very well-versed and familiar with what
6 happened during the April release.

7 CHAIRMAN CARTER: Hang on one second. I was going to
8 go to Commissioner McMurrian and then Commissioner Argenziano.
9 Would you yield for a moment, Commissioner? Okay.

10 You're recognized.

11 MS. CONQUEST: Thank you, Commissioners. I would
12 like to tell you about the real life as a CLEC following the
13 release. Basically, operations came to a screeching halt. We
14 couldn't provision our customer service, so they left us. We
15 lost our credibility. We had issues with the billing
16 notifications for entering correct bills, cleaning that up,
17 filing disputes with AT&T appropriately to fix charges. And I
18 would tell you that it has been somewhat of a disappointment,
19 because the CLECs in Florida in particular have always worked
20 as a collaborative, and you are to be commended because your
21 plan is the plan that is in most of the states in the
22 southeast. And we would even like to see that plan for SEEMs
23 go forward into some of the other AT&T states, but the plan
24 does not pay CLECs for the type of gross negligence that we
25 experienced.

1 We had schemas that were incorrect, we had issues
2 with the manual processes, we had centers that couldn't answer
3 questions about where our orders were, we couldn't tell our
4 customers when we were going to show up, we couldn't maintain
5 our credibility. One of the things I wanted to point out to
6 Commissioner Skop was that, yes, there have been two releases
7 subsequently. Each one of those had the meat and potatoes
8 pulled from those releases. Their LASR reflow was removed, the
9 parsed CSR was removed, the potentials for the real train
10 wrecks were stripped from that particular coding packages.

11 I would tell you that the southeast had a very tried
12 and true process. They had a process of creating change
13 requests, they had a process of scoping releases with their
14 vendors, they had a process for sizing, and they had a very
15 sophisticated testing process. Those processes failed and they
16 failed miserably. Why did they fail? Part of it I'm sure had
17 to do with the fact they were maintaining two testing tracking
18 systems. Part of it had to do with the fact there were two
19 vendors included. Part of it had to do with the fact that the
20 test cases themselves were not robust enough to catch the
21 information. And part of it had to do with the fact that we
22 had no roll back plan. And we have since talked about the
23 importance of how we could roll back and how we could recover
24 if we faced such a disaster.

25 And going forward, the fact that they are keeping the

1 dual systems up is somewhat of a comfort, but I have to tell
2 that you in July the interfaces that we are migrating to is
3 new. Everybody that is currently using what we call TAG is
4 going to a new version called SOAP XML (phonetic). The
5 magnitude and work effort for the vendors and the CLECs to get
6 there is going to be a horrific accomplishment. We are all
7 changing the very root of how we were doing business.

8 Going forward, I agree with Commissioner Skop, it's
9 going to be wonderful. It's going to be easier to maintain, it
10 is going to be easier to test, it's going to be much better for
11 the CLECs and for AT&T. But there is also a misconception that
12 when we talk about a 22-state release that everything is the
13 same throughout the 22-state footprint. If you go look at
14 AT&T's website, you are going to see that they have procedures
15 that are designated for SBC, they have procedures that are
16 designated Ameritech, they have procedures labeled west, they
17 have procedures labeled southeast. The CLECs in the southeast
18 approached AT&T and submitted change requests asking them to
19 choose the best practices of the comparison between what we saw
20 in the nine states and in the thirteen states. On the first go
21 around, all of those best practice change requests were
22 canceled. They were not even accepted. They were later placed
23 into an accepted held position to be done at some point in the
24 future.

25 So I don't want this Commission to have an

1 understanding that we are getting state-of-the-art treatment
2 and that we are making the process better. One of the big
3 concerns happened with the CLECs who ordered commingled
4 services. Those were manual ordered. AT&T consistently
5 refuses to mechanize those orders. It took CLECs who were
6 ordering those from being able to order maybe one an hour to
7 take maybe a day or two days to get one of those orders through
8 the editing process at the time this change was made. And we
9 still ask for this piece of mechanization, and we are still
10 negotiating and trying to get it.

11 So the concept that things are getting more
12 sophisticated and things are getting better for the CLECs is
13 not true. And if you look at my SEEM payments, the SEEM plan
14 was crafted such that the money that was paid would be an
15 incentive to get things fixed, but I would challenge you to
16 look at the plan and to see how many months are missed month
17 after month after month and those metrics are still not
18 corrected.

19 I would also say to you that two months is really not
20 long enough. There was a conception or a statement made that
21 all the CLEC impacting defects were fixed in sixty days. That
22 simply isn't true. They went on for months. And if you look
23 at their defect report that's published on their website, you
24 can see the evidence of that.

25 One of the important things, too, to note was that

1 they failed to report properly and had to go back and create
2 these change requests that were defects. They weren't actually
3 created on the website so that the CLEC could go look and see
4 what was broken, so we were operating in the dark as opposed to
5 using a tried and true process.

6 Now, I understand going forward they do intend to
7 reinstitute that. It is described in the change management
8 process that they have agreed to in the southeast, and
9 hopefully they will go back and follow that process as we have
10 all agreed upon. But I would like to thank you for the
11 opportunity to tell you about what happened to us. I would
12 like to thank your staff for their hard work. They had a very
13 thorough report. They did a wonderful job at examining what
14 happened given the amount of data that was provided to them,
15 and I would say I suspect they didn't even get to look at all
16 of the data as they accomplished all of this. But I would be
17 happy to talk to you about questions, or what life as a CLEC is
18 like during these releases if you have some for me.

19 CHAIRMAN CARTER: Thank you. Commissioner McMurrian.

20 COMMISSIONER McMURRIAN: Thank you.

21 And, Ms. Conquest, thank you for that. I did want
22 you to specifically address the point that Mr. Hatch brought up
23 and Commissioner Skop was talking about, about having the
24 ability to not move to the interface until you are satisfied
25 that the bugs are worked out. I wanted to hear your thoughts

1 specifically on that because it sounds like that is something
2 that wasn't available before.

3 MS. CONQUEST: Historically, the CLECs are required
4 to upgrade and stay on one of two versions of releases. Now,
5 there was a big concern, because as they deploy another version
6 you are expected to upgrade. You may choose to go to -- we'll
7 say Version 10 from Version 6, or Version 9 from Version 9 to
8 10. But going forward, we will have to stay within two
9 versions of what the AT&T code is deploying. So we will all be
10 changing. The EDI interface that many of the CLECs use is
11 going away, so they will be rewriting their code and adapting
12 to the new XML interface that I talked about earlier.

13 The Verigate is going to be the new preorder system.
14 Currently most of the CLECs here either use LASR or they use
15 TAG, and they do pull in CSRs called unparsed. Those will
16 become available, and there is a concern that the CLECs have
17 regarding CPNI information in that today I'm a CLECs and I use
18 this tool. I can prohibit other CLECs from seeing my
19 information. I can safeguard my competitive customers. Going
20 forward as I go into the new and improved version of OSS, that
21 will not be protected. I will get a report, possibly, I'm not
22 for sure yet because I haven't seen it, but that will tell me
23 who looked at my information outside of my scope of IDs.

24 So the conception that there is windows, yes, and you
25 do have choices, yes. But ultimately you must keep up with

1 their technology and you must move forward. And you do that in
2 increments based upon do you do it all at one time, do you move
3 it with some point further down the road once they have tested.
4 Nobody wants to be first anymore is, I guess, where I'm going
5 with this.

6 So the fact that they have committed here today to
7 allow six months does improve my comfort level. Most of the
8 schedules that AT&T posts says to be determined. If I go and
9 look at their schedule for retirement right now, I don't see a
10 date in there. I see to be determined. So I need some comfort
11 that I have that time to make that transition and that I am
12 moving forward to some type of platform that has stability.

13 COMMISSIONER McMURRIAN: And thank you for that.

14 It seems to me, or I think there is some agreement,
15 at least I agree with some of what Commissioner Skop was saying
16 that the important thing to focus on is going forward. I mean,
17 I hear your concerns about what happened with the April
18 release, but I think generally when we have these kinds of
19 things come up, I'm not talking about just in the telecom area,
20 but when we have show cause issues come up, I think generally
21 the Commission tries to focus on can we get to a better endgame
22 without necessarily having to swing the largest stick we can
23 find. And that's my opinion, anyway. I shouldn't really speak
24 for the Commission.

25 And so it seems like some of the discussion we are

1 having is productive, and it's focused more on how do we make
2 sure that this doesn't happen again. And so I agree with some
3 of what Commissioner Skop has said about looking at ways to
4 sort of achieve that without necessarily going as far as
5 perhaps what we have on the table.

6 I, for one, think the show cause route is probably
7 something that you can look at in the future. I think I agree
8 with Mr. Hatch that I don't see the need to really have one
9 open. It seems like it would be better to see how this process
10 goes. We have addressed the things going forward, and then see
11 how it goes. We have always got the ability to do a show cause
12 ourselves, or you all have the ability to raise it again
13 because you continue to have those problems, but I think that,
14 you know, having a show cause hanging out there is not
15 necessarily that productive when we always have that tool
16 available to us.

17 So back on the focus on going forward, I did want to
18 go back to the other thing that I heard Mr. Hatch say about the
19 remedies under the interconnection agreement. And I wanted to
20 get some more clarification on what those were. What other
21 remedies do CLECs have? And you all can respond to this, too.
22 What other remedies do they have under the interconnection
23 agreement?

24 MR. HATCH: Probably you should address that question
25 to the CLECs, but just from my perception is that they can

1 always file a claim for damages. Now, of course, the
2 Commission doesn't have damages jurisdiction. They can go to
3 any court of competent jurisdiction, and if they feel they have
4 been harmed, they can prove up their case.

5 COMMISSIONER McMURRIAN: Okay. Ms. Kaufman.

6 MS. KAUFMAN: I'm not aware of any remedies in the
7 interconnection agreement. I will admit to you that I didn't
8 review all of the interconnection agreements before preparing
9 for this item, but I don't know if Ms. Conquest has anything to
10 add to that.

11 MS. CONQUEST: I can tell you that the NuVox and the
12 former FDN interconnection agreements all referenced the
13 performance metric plan, and to my knowledge there are no
14 remedies outside of the SEEM plan available.

15 MR. HATCH: Mr. Chair, before we get too far afield,
16 could I have Mr. Smith address some of the stuff that
17 Ms. Conquest had said? She raised a whole lot of detailed
18 issues that have never been voiced before, and some things need
19 to be addressed if you would indulge.

20 CHAIRMAN CARTER: Commissioner Argenziano, would you
21 mind if we yield for a moment to hear that, and then we will
22 come back to you.

23 Mr. Hatch, you're recognized.

24 MR. SMITH: For purposes of time, I will just address
25 one item. There are several that I could share some

1 information on, but one that I want to explain. When we came
2 to the May meeting, we came in hand with a commitment to not go
3 forward with future 22-state releases because we were
4 determined we were not going to have this happen again. The
5 costs to us or more than just SEEM. We have had significant
6 costs operationally to bring in additional resources to pay
7 overtime to employees. This was a significant issue.

8 Despite the fact that I realize AT&T is a large
9 company, it was very significant to us. It does impact
10 forward-looking, you know, our business case and trying to be
11 fiscally responsible with investment particularly in this day
12 and time. And we are determined to take every step
13 irregardless of SEEM to make this right. But there is one
14 thing that we have done that I think is the right thing, and I
15 wanted to explain that we pulled some things out of the August
16 and November release, that's true, because we want to make sure
17 we take measured steps.

18 The March release is a measured step. If we go
19 forward with July, and there are issues that are found in the
20 quality of the capability we put out there. In terms of the
21 comment about two versions and only having two versions, we're
22 not going to go forward until we get those fixed. We will
23 delay the next release. It's very important to us. We want to
24 implement this. Uniform releases or uniform processes for us
25 is important, but we are not going to put ourselves, much less

1 our customers, in a position to experience that again, and we
2 will scope these releases as one means of trying to provide
3 that assurance, even going forward.

4 CHAIRMAN CARTER: Thank you.

5 Commissioner Argenziano, and then I will come back to
6 you, Commissioner McMurrian. Commissioner Argenziano.

7 COMMISSIONER ARGENZIANO: Thank you, Mr. Chair. You
8 know, after reading and listening to the discussion, I feel
9 that the doubling of the fines is not probably productive at
10 this point. I don't think that's a go for me, but I do think
11 that staff is not recommending to close show cause. And since
12 there was injury or problems for the CLECs, I think that it is
13 only fair to say, okay, AT&T -- and in staff's words said that
14 AT&T is moving and they are trying to remedy things, and it
15 looks like they are trying to do a good job. I'm looking for
16 the words in staff -- a strong effort to remedy the problems
17 according to staff, and I appreciate that. And I think you
18 have to look at that and say, you know, that's happening.

19 However, it is part of our vested -- in our
20 jurisdiction to make sure that we ensure that all providers of
21 telecommunications service are treated fairly by preventing any
22 anticompetitive behavior. And I'm not saying that it is
23 anticompetitive behavior, but it's something that I would like
24 to look at to make sure that it's not. And I think it is
25 within your jurisdiction and we should be looking at that.

1 So if we move forward, let me ask staff this
2 question. The show cause would still be available in April and
3 in June, is that correct?

4 MR. TEITZMAN: That is correct, Commissioner.

5 COMMISSIONER ARGENZIANO: So if AT&T -- and I'm not
6 talking about nit-picking things. My God, I mean, we have to
7 get to where we want to get to, and there is going to be
8 problems here and there. So I don't think it is productive to,
9 you know -- but this was something, there were some major
10 problems here, but everything I see says that the majority is
11 being already addressed by AT&T, so I don't think that the
12 penalty is warranted at this time.

13 However, and I think Commissioner Skop said it
14 before, that if it continues, it's something that we have to
15 look at because we are here charged with looking at making sure
16 that there is no anticompetitive behavior, or that it doesn't
17 injure the other companies that have to exist in the state.

18 So with that, I do think that keeping the show cause
19 intact for awhile is that little stick that says, hey, come on,
20 keep up the good effort, but the penalties I think are just
21 counterproductive at this point. And that would just be my
22 comment.

23 CHAIRMAN CARTER: Thank you, Commissioner.

24 Commissioner Skop, you're recognized, sir.

25 COMMISSIONER SKOP: Thank you, Mr. Chairman.

1 I would agree that the penalty would probably be
2 counterproductive. I guess there are multiple ways to look at
3 this. It seems to me, at least if I were AT&T in their
4 position, being a corporate manager instead of a Commission,
5 again, Mr. Hatch talked about exposure, and that would be, you
6 know, the disincentive to implement future OSS releases. At
7 least if I were looking at it from a financial perspective,
8 unless internally I could show substantial business process
9 savings that would outweigh any exposure to my SEEM payments,
10 there is no way I would go forward with a future release.

11 So, again, I think that, you know, a show cause can
12 be implemented at any time in the future upon something that
13 happens, but one thing that gave me concern with the show
14 cause, and I would like to hear from staff, because, again, I
15 heard an inconsistency from Mr. Hatch, was that there has been
16 no showing of violation of Commission rule or statute as a
17 result of this. So, again, how does that play into the
18 Commission's ability to bring a show cause, if any?

19 MR. TEITZMAN: Well, specifically, in the order, the
20 first order on setting forth the SEEMs plan, the Commission at
21 that time in their order, and this is found on Page 7 of
22 staff's recommendation, the first full paragraph, specifically
23 set aside at that time that -- and I can read it actually, the
24 order stated that BellSouth, now, of courses, AT&T's service to
25 CLECs had deteriorated severely. We could require a show cause

1 proceeding to investigate the causes and potential remedies.
2 So the Commission at the inception of the SEEMs plan had set
3 aside that if the SEEMs remedies were not adequate that a show
4 cause proceeding could be initiated.

5 COMMISSIONER SKOP: So it could be. So we still have
6 that option on the table in the future. We don't need -- we
7 don't have a show cause currently pending, but that is an
8 option that the Commission has at its disposal by virtue of the
9 past order to implement it at a time should it be necessary.

10 MR. TEITZMAN: That's correct, Commissioner.
11 Basically, what we have before you is the petitioners have
12 requested the Commission to initiate a show cause proceeding
13 for the April release.

14 COMMISSIONER SKOP: Okay. Thank you.

15 CHAIRMAN CARTER: Commissioners, anything further?
16 Commissioner McMurrrian, you're recognized.

17 COMMISSIONER McMURRIAN: I've got a question to
18 follow up on what Mr. Teitzman just said. So we don't have a
19 pending show cause, but we have got a pending request for a
20 show cause?

21 MR. TEITZMAN: A request to initiate a show cause,
22 that is correct, Commissioner.

23 COMMISSIONER McMURRIAN: So is that a separate docket
24 or is that just within this docket?

25 MR. TEITZMAN: That is within this docket.

1 COMMISSIONER McMURRIAN: So what would -- based on
2 the discussion we're having, what would happen -- and based on
3 your recommendation, what happens with that? Does it just sort
4 of sit on the shelf and it gets -- the other point, and I
5 thought that perhaps this is somewhat we were talking about
6 earlier when Mr. Hatch was talking about, you know, what
7 happens -- I guess we're down the road, and we talk about sort
8 of reviving, I guess, the request for the show cause, or taking
9 it off the shelf, that sort of thing. Then you would also be,
10 perhaps, talking about problems with the later release and the
11 initial request wouldn't have covered that later release. So
12 in some form or fashion you would have to, I think, would look
13 at -- the parties would probably look at amending their request
14 at some time unless the staff were to do it. Anyway, I just --
15 it seems kind of complicated. So is there some way you can
16 uncomplicate that for me?

17 MR. TEITZMAN: I guess the easy answer there is that
18 the Commission doesn't necessarily need a petition or a request
19 to initiate a show cause. The Commission can initiate a show
20 cause action on its own motion at any time.

21 COMMISSIONER McMURRIAN: Depending on who initiates
22 it, does it change what our role in that show cause would be?
23 In other words, if we initiate it, do we have the burden, or do
24 we have the burden in any show cause?

25 MR. TEITZMAN: We would have the burden in any show

1 causes.

2 COMMISSIONER McMURRIAN: Okay. And I guess where I
3 was -- I mean, I hear what my colleagues are saying about the
4 show cause, and I guess I don't feel that strongly about it.
5 It just seems to me that it sort of creates a complication to
6 have an existing show cause sort of sitting on the shelf, and
7 then if something comes up later you have to look at whether to
8 change it or not, that you have always got that ability to open
9 a new show cause. So I guess that is just sharing my thoughts.
10 I don't really know what to do about it. But I do agree from
11 what has been said; I think that we are gaining some consensus,
12 or at least I think I'm hearing it about not doubling. I agree
13 that that is also in order.

14 MS. SALAK: Commissioner, we have actually had that
15 situation where we had a party request that the Commission open
16 a show cause, and then when the recommendation came around --
17 we did it as they asked and then we added to it. So, you know,
18 staff added an issue about whether or not the Commission should
19 add to it. So we have done that before, just for your
20 information.

21 CHAIRMAN CARTER: Commissioner Skop.

22 COMMISSIONER SKOP: Thank you, Mr. Chairman.

23 I think where I am at, I mean, just picking up on
24 what Commissioner McMurrian stated, and, again, it takes three
25 to move a ship. But, again, I'm all for the will of the

1 Commission. But it seems to me that a straightforward approach
2 to this would be, I think, as Commissioner McMurrian has
3 pointed out, and Commissioner Argenziano has mentioned, there
4 is no real reason to double the SEEMs on a forward-going basis.
5 Again, the scrutiny and wrath of the Commission is prepared to
6 jump down AT&T's case if we have a problem of this magnitude
7 again. But, in that regard, even with a show cause, we reserve
8 the right to bring a show cause at any time by virtue of the
9 past order.

10 So, again, as long as we reserve that right, you
11 know, I don't know whether a pending show cause is even
12 necessary. So I think that perhaps an appropriate solution
13 might be to -- and, again, I would look to Commissioner Edgar
14 to make a motion because she is very good at putting things
15 concisely and I'm not. But just basically not adopt the staff
16 recommendation of doubling of the SEEMs, but reserving the
17 right to bring a show cause at an additional future date if
18 such show cause would be deemed necessary by the Commission.

19 CHAIRMAN CARTER: Thank you, Commissioner. You have
20 read my mind. I was just looking at Commissioner Edgar to see
21 if she could -- let me just say, Commissioners, are we at that
22 point, because I was getting ready to look to Commissioner
23 Edgar for a motion?

24 Commissioner Edgar, you're recognized.

25 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

1 I'll give it the old college try. I would make a
2 motion at this time that looking at the language in Issue 1, I
3 move that AT&T be allowed to move forward with the next release
4 with the remedies and additional assurances that have been
5 described to our staff and to us today. One example is the
6 safety mechanism for the old interface to exist and the other
7 remedies to the prior problems that they have laid out for our
8 staff. And that they be able to move forward with that release
9 without any changes to the SEEM remedies at this time.

10 COMMISSIONER SKOP: Second.

11 CHAIRMAN CARTER: Commissioners, are we clear on the
12 motion? And that still preserves the right for the show cause.

13 COMMISSIONER EDGAR: For our staff or another entity
14 to work with our staff, if indeed, there seems to be a reason
15 to take that course in the future. I don't think this
16 remedy -- excuse me, I'm sorry, Commissioner -- that this
17 motion impacts our general authority to do that at any point in
18 time in any way.

19 CHAIRMAN CARTER: Commissioner Argenziano.

20 COMMISSIONER ARGENZIANO: Just as long as we are on
21 the record, and I think that is where I wanted to go, as long
22 as we keep that available, that just says, you know, hey, we're
23 watching, and we're not talking about the double penalties.

24 CHAIRMAN CARTER: That is correct.

25 COMMISSIONER ARGENZIANO: I didn't hear the first

1 part.

2 CHAIRMAN CARTER: That's correct.

3 COMMISSIONER ARGENZIANO: Okay. Thank you.

4 CHAIRMAN CARTER: Commissioners, are we all clear?

5 It has been moved and properly seconded. Any

6 question? Any debate? It has been moved and properly

7 seconded. All in favor of the notion, let it be known by the

8 sign of aye.

9 (Simultaneous aye.)

10 CHAIRMAN CARTER: All those opposed, like sign. Show

11 it done.

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STATE OF FLORIDA)

CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 13th day of March, 2009.



JANE FAUROT, RPR
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