

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 2, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Harvey, Hallenstein)
Office of the General Counsel (Teitzman, Brooks) *MT GB*

COMMISSION
CLERK

09 SEP -2 AM 11:06

RECEIVED-FPSC

RE: Docket No. 000121A-TP – Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (AT&T FLORIDA TRACK)

AGENDA: 09/15/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\000121A.RCM.DOC

Case Background

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

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FPSC-COMMISSION CLERK

AT&T's wholesale Performance Assessment Plan provides a standard against which CLECs and the Commission can measure performance over time to detect and correct any degradation of service provided to CLECs. The Performance Assessment Plan is comprised of a Service Quality Measurement (SQM) plan and a Self-Effectuating Enforcement Mechanism (SEEM) remedy plan. The SQM plan includes a comprehensive and detailed description of AT&T's performance measurements, while the SEEM remedy plan details the methodology for payments to CLECs (Tier 1) and to the State of Florida (Tier 2) when AT&T's performance fails to meet the SQM standards. The SQM Plan currently consists of 50 measurements of which 35 measures have applicable SEEM remedy payments, if AT&T fails to meet the performance standards as agreed by the parties and approved by the Commission.

Pursuant to Section 2.6 of the SEEM Administrative Plan, AT&T shall pay fines to the Commission, in the aggregate, for all reposted SQM reports in the amount of \$400 per day. On June 11, 2009 AT&T filed a petition for waiver of the \$400 per day reposting penalty. The reposting stemmed from an error in the coding of performance measurement data. AT&T noted that, absent the relief being sought in the petition, the reposting of the corrected data would result in AT&T paying a fine of approximately \$35,200 in Florida.

This recommendation addresses whether AT&T should be required to pay penalties in accordance with Section 2.6 of AT&T's SEEM Plan.

Jurisdiction

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

Discussion of Issues

Issue 1: Should staff grant AT&T's Petition to waive SEEM penalties in the amount of \$35,200 for having to repost service quality measurement data in accordance with a provision in the SEEM Administrative Plan?

Recommendation: Yes. The Commission should grant AT&T's petition to waive the reposting penalty in the amount of \$35,200 payable to the state General Revenue Fund. (Hallenstein, Harvey)

Staff Analysis

In providing services pursuant to the interconnection agreements between AT&T and each CLEC, AT&T is required to report its Service Quality Measurement (SQM) performance data results to each CLEC. On the last business day of each month, AT&T posts monthly SQM data to its Performance Measurements and Analysis Platform (PMAP) website.

When AT&T proposes to make any changes to the methods by which SQM data is calculated, AT&T must provide a written notice to the Commission to inform staff of the changes. The notice, known as the PMAP Data Notification Report, is filed monthly in this Docket and is subsequently discussed on a collaborative conference call which includes AT&T, CLECs, and the Commission staff.

In AT&T's April 30, 2009 PMAP Data Notification Report, AT&T noted that an error was discovered in the coding that is used to post information for the P-11 Service Order Accuracy performance measurement.¹ The error was discovered by AT&T after performing an analysis of the PMAP code and resulted in transactions not being mapped to the appropriate level of product disaggregation.² According to AT&T, some local number portability (LNP) transactions were mapped and recorded to the resale disaggregation when the transactions should have been mapped and recorded to the UNE disaggregation. As a result, AT&T was posting inaccurate monthly data results to its PMAP website.

Appendix D of the SQM Plan, AT&T is required to repost the performance measurement data if the (1) the aggregate performance is in an "out of parity" condition and, (2) the recalculated data results in a greater than or equal to 2% decline in performance at the sub-metric

¹ The Service Order Accuracy report measures the accuracy and completeness of CLEC requests for service by comparing the CLEC local service request (LSR) to the completed service order after provisioning has been completed.

² Disaggregation is the process of breaking down performance data into specific categories or product types such as resale, UNEs, trunks, and loops. These product types can be broken down further into residential or business customers so that like-to-like comparisons can be made from wholesale to retail. Disaggregation is important to the remedy plan because it prevents non-compliant performance in one area from being masked by compliant performance in another area.

or disaggregated level.³ Both of these criteria were met when AT&T corrected the code to properly map the transactions for the Service Order Accuracy performance measurement. As a result, AT&T was required to repost the data.

Pursuant to Appendix D of the SQM Plan also requires performance data to be reposted for a maximum of three months in arrears from date of detection. In this case, the Service Order Accuracy coding error was discovered during the analysis of the March 2009 report month. As a result, this error would trigger a reposting beginning with the report months of detection, March 2009, and three months preceding, December 2008, January 2009, and February 2009.

Section 2.6 of the SEEM Administrative Plan mandates that AT&T will pay a fine to the Commission in the amount of \$400 per day for all SQM reports that have to be reposted. However, if the reposting is associated with a PMAP Data Notification, a maximum of ninety days is applied to the fine.⁴ In this case, the error discovered by AT&T was part of the PMAP Data Notification process.

Upon applying the maximum of ninety days, AT&T calculated the \$400 per day count starting on February 2, 2009 (the first business day of February) through April 30, 2009 (the date the error was reported in AT&T's PMAP Notification Report). In sum, AT&T would have to pay \$35,200 in reposting fines for 88 days of uncorrected reports. Per section 2.6 of the SEEM Administrative Plan, the payments are to be deposited in the state General Revenue Fund.

AT&T's June 11, 2009 Petition

In its petition, AT&T is seeking relief of the \$400 per day reposting penalty as required by section 2.6 of the SEEM Administrative Plan. The inaccurate SQM reporting would result in a total penalty of \$35,200 to the state of Florida and \$316,800 in reposting fines in AT&T's nine-state southeast region.

It is AT&T's position that although section 2.6 of the SEEM Administrative Plan asserts a \$400 per day reposting penalty, AT&T cites Section 4.5.3 of the SEEM Administrative Plan wherein AT&T is entitled to "petition the Commission to consider relief based upon other circumstances." AT&T contends that given the circumstances that CLECs incurred no harm, and that AT&T acted in good faith by identifying and self-reporting this error, a penalty of this magnitude is unduly excessive and inconsistent with purposes of the reposting obligation.

³ Item 3 of Appendix D in the SQM Plan states, "SQM performance sub-metric calculations with benchmarks where statewide aggregate performance is in an "out of parity" condition will be available for reposting whenever there is a $\geq 2\%$ decline in BellSouth's [now AT&T] performance at the sub-metric level.

⁴ Section 2.6 of the SEEM Administrative Plan states, "BellSouth [now AT&T] shall pay fines to the Commission, in the aggregate, for all reposted SQM reports in the amount of \$400 per day. If such reposting is associated with any Data Notification, a maximum of ninety (90) days may be deducted from the fine. The circumstances which may necessitate a reposting of SQM reports are detailed in Appendix F, Reposting of Performance Data and Recalculation of SEEM Payments. Such payments shall be made to the Commission for deposit into the state General Revenue Fund within (15) calendar days of the final publication date of the report or the report revision date.

More importantly, AT&T further noted in its filing that the coding changes made to the SQM performance results do not affect the coding used to calculate SEEM remedies. AT&T stated that “all SEEM remedy obligations and SEEM liability calculations were correctly processed at all times, and all CLECs have received the appropriate payments under the SEEM Plan.”

Staff's Conclusion

It is staff's position that the parameters set forth in the reposting policy are designed to ensure that any data that changes in a “meaningful way” should be reposted retroactively. In this instance, the recalculated difference in the data was such a unique situation that it did not trigger inaccurate SEEM remedies.

Staff confirmed with AT&T that this is the first instance where the reposting of the SQM performance reports had no impact on SEEM remedy calculations or payments. The SEEM remedy code was properly performing the remedy Tier 1 and Tier 2 calculations even though the SQM performance reports were incorrect. In all previous instances where a reposting of the SQM reports were required, the reposting was accompanied by a reprocessing of SEEM remedy calculations and payments. Staff is also unaware of any CLECs that have disputed any material facts surrounding the reposting of the SQM performance data for P-11 Service Order Accuracy.

Staff agrees with AT&T, whereas the company acted in good faith by identifying and self-reporting this error in the SQM performance data. However, staff points out that since AT&T is responsible for compiling and warehousing the aggregate performance data, AT&T would be the only entity that would be able to discover the error.

This docket has remained open to not only monitor the quality of service AT&T provides to CLECs, but to also periodically conduct a formal review of AT&T's wholesale Performance Assessment Plan. In June of this year, staff initiated its fourth review of the Plan since its inception in 2001. The specifics and language currently in the reposting policy are currently being reviewed by the parties and staff for any necessary revisions.

Staff notes that the South Carolina, North Carolina, and Kentucky Public Service Commissions each granted AT&T's petition for a waiver of fines incurred given the specific circumstances arising in this case. Each Commission further noted that their decision is not intended to be precedent-setting, and any future petitions of this nature should be considered on a case-by-case basis.

Staff's analysis of this issue included a request of all audits performed by AT&T or an outside party since July 2007 to ensure accuracy of programming code associated with SQM and SEEM data. AT&T reported that since July 2007 only one audit has been conducted of SEEM 2005 penalty payment disbursements. No audits were reported that verified the accuracy of SQM data.

In conclusion, staff believes AT&T's request for waiver of reposting penalties to be a unique circumstance. However, staff continues to be concerned about AT&T's efforts to ensure quality of SQM data. AT&T is encouraged to audit the SQM data on a more frequent basis.

Docket No. 000121A-TP

Date: September 2, 2009

The Commission should grant AT&T's petition to waive the reposting penalty in the amount of \$35,200 payable to the state General Revenue Fund.

Docket No. 000121A-TP

Date: September 2, 2009

Issue 2: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, the resulting Order will be issued as a Proposed Agency Action. The Order will become final upon issuance of a Consummating Order, if no person whose substantial interests are affected timely files a protest within 21 days of the issuance of the Order. This docket should remain open pending the implementation of the Commission's decision and for purposes of future performance measure monitoring. **(Brooks)**

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, the resulting Order will be issued as a Proposed Agency Action. The Order will become final upon issuance of a Consummating Order, if no person whose substantial interests are affected timely files a protest within 21 days of the issuance of the Order. This docket should remain open pending the implementation of the Commission's decision and for purposes of future performance measure monitoring.