

**Marguerite McLean**000121A-TP

**From:** Martha Johnson [marthaj@fcta.com]  
**Sent:** Monday, July 19, 2010 9:48 AM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 000121A - FCTA's Issues Remaining in Dispute  
**Attachments:** 000121a - FCTA's Remaining Issues 7-16-10.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact David Konuch at the number below. Thank you.

**A.** The person responsible for this electronic filing is:

David A. Konuch  
Senior Counsel, Regulatory Law and Technology  
Florida Cable Telecommunications Association  
246 E. 6<sup>th</sup> Avenue  
Tallahassee, FL 32303  
850-681-1990  
850-681-9676  
[dkonuch@fcta.com](mailto:dkonuch@fcta.com)

**B.** The docket title is: **In Re: Docket No. 000121** - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (AT&T FLORIDA TRACK)

**C.** This document is filed on behalf of the Florida Cable Telecommunications Association, Inc.

**D.** This document has a total of 36 pages.

**E.** Description of document: FCTA's Issues Remaining in Dispute.

Thank you,

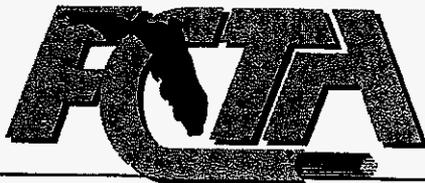
Martha Johnson  
Regulatory Assistant  
Florida Cable Telecommunications Association  
246 E. 6th Avenue  
Tallahassee, FL 32303  
850/681-1990  
850/681-9676 (fax)

DOCUMENT NUMBER-DATE

05889 JUL 19 2010

FPSC-COMMISSION CLERK

7/19/2010



---

Florida Cable Telecommunications Association

---

Steve Wilkerson, President

VIA ELECTRONIC AND FIRST CLASS MAIL

July 16, 2010

Lisa Harvey, Assistant Director  
Jerry Hallenstein, Government Analyst II  
Pauline Evans, Counsel  
Florida Public Service Commission  
2450 Shumard Oak Blvd  
Tallahassee, FL 32399-0850

RE: Docket No. 00121A-TP

Dear Ms. Harvey, Mr. Hallenstein, and Ms. Evans:

FCTA submits this letter to attempt to narrow the remaining issues in dispute in this proceeding.

**FCTA's Specific Proposals and Identification of Issues That Remain in Dispute**

**1. Effectively Address Metrics that AT&T Chronically Fails By Adopting Escalator Proposal from Comcast's January 15, 2010 Comments.** First, FCTA's views center on creating incentives to curb repeated misses on metrics that have the greatest effect on competition. AT&T's July 9, 2010 response to the Staff's recent data request underscores the need for creating performance incentives. AT&T responded that, from May 2009 to April 2010, "24 CLECs received remedies for a performance measure that failed more than six consecutive months." AT&T Florida Response to June 30, 2010 Staff Data Requests, Item No. 3, p. 1. FCTA's goal in proposing changes to the metrics is to create incentives for AT&T to fix the problems with these oft-missed metrics once and for all.

Comcast's escalator table from its January 15, 2010 filing seeks to create incentives to curb these chronic misses. (Attachment 1 hereto.) **FCTA believes that Comcast's proposals from January 15, 2010, contained on a single sheet of paper, should be included in any attempt to improve the SEEM and SQM process.**

**2. Key Benchmarks AT&T is meeting now should be retained or strengthened, not weakened.**

Several key benchmarks exist that AT&T routinely meets at a 98 percent level. Inexplicably, rather than continue this performance, AT&T seeks to lessen these key metrics to a level of 90 percent. That would enable it to degrade its performance on key metrics that it routinely meets now. These metrics currently are working, as AT&T is meeting them, creating a "win-win" situation. AT&T meets the metrics, while the CLECs get the performance. Lowering these metrics would in essence "break" something that is working now. These particular metrics

DOCUMENT NUMBER-DATE

05889 JUL 19 01

FPSC-COMMISSION CLERK

appear to strike the right balance. They should be retained as they are, or strengthened to reflect AT&T's current performance level (e.g., a metric AT&T meets at the 98 percent level could be raised from 95 percent rather than lowered to 90 percent.) Otherwise, lowering the benchmarks as AT&T requests will enable AT&T to degrade its current performance – a step backward for the parties and for competition.

These benchmarks include **Percent Flow Through Service Request (O-3)** (involving number portability, a critical metric for competitive providers); **FOC Timeliness (O-9)**. In addition, a new metric that would measure the number of incomplete disconnects for non-specific LNP disconnects should be added. **Attachment 2 hereto flags these key metrics and supporting rationale on a single piece of paper.** See also Sections IV (A), (C) and (D) in FCTA's Reply Comments as filed on September 3, 2009 for supporting rationale (Attachment 3 hereto).

### **3. Outline of FCTA's Specific Proposals for Modifying SQM and SEEM**

The following outline identifies the portions of the SQM and SEEM plans that still need revision in FCTA's view.

#### **1. SQM**

##### **a. Increase and Add Key Benchmarks**

- i. See Sections IV (A), (C) and (D) in FCTA's Reply Comments as filed on September 3, 2009 (Attachment 3 hereto).

#### **2. SEEMs**

##### **a. Tier I Remedies**

- i. See Escalator Table from Comcast January 15, 2010 Comments (Attachment 1 hereto).
- ii. Include the following 'de-escalation' process language as conceptualized by CBeyond in its February 1, 2010 Comments. (Attachment 4 hereto) CBeyond proffered a quarterly assessment regime. FCTA does not oppose such consideration, so long as the following language is tailored to the existing monthly assessment regime:
  1. "Payment de-escalation process is implemented. The escalation of payments for consecutive months of non-compliant service will be matched month for month with de-escalation of payments for compliant service. For example, if AT&T has 4 consecutive monthly "misses" it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, AT&T makes no payment. A payment "indicator" de-escalates down from month 4 to month 3. However, if AT&T misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment "indicator" presently sits. If AT&T misses again the following month, it will make a payment that escalates back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon compliant service sufficient to move the payment "indicator" back to the month 1 level. This payment de-escalation process is necessary to ensure that AT&T truly eliminates discriminatory conditions and does not just

implement a temporary fix in order to reset the SEEM payment level.”

- b. Tier II Cannot Be Removed Without Moving Equivalent Protections to Tier I
  - i. If Tier II is removed, it should be replaced with a significant penalty escalator that would remove the problem. Nor should any settlement agreement be predicated on removal of Tier II, as that is beyond the parties’ control.
  - ii. Some Key Tier II Metrics have no Tier I analog. Thus, removing Tier II without creating a performance measure and penalty as part of Tier I will create an incentive for anti-competitive behavior. Accordingly, were the Commission to remove Tier II, it would need to create analog provisions in Tier I in order to safeguard competition. **Attachment 5 hereto lists on a single sheet of paper the Tier II penalties that lack any Tier I analog.**
  - iii. Illustrative example
    1. AT&T took issue in its 5/11 reply comments with LNP- Disconnect Timeliness (Non-Trigger) or LDT. AT&T indicated this is a relatively small group of orders when placed in context with all porting activity. FCTA had not investigated how many orders are in this universe of orders. FCTA did however review AT&T’s failure history on this measure. AT&T has failed this metric continuously since March 2006. AT&T has paid approximately \$5,000.00 per month in Tier II penalties for this failure during that time. AT&T added \$255,000.00 to their cost of doing business and still had not found any reason to fix this problem and never attempted to address the measure in this forum. Eliminating Tier II payments will ensure that AT&T never has any incentive whatsoever to address this issue. Using 52 orders per month as the benchmark 2,652 customer orders had been impacted so far. Even though each of the 2,652 orders represents a problem for a customer, AT&T tried to downplay its significance in its comments. If Tier 2 is eliminated and a weak Tier 1 escalator replaces it, AT&T will have no reason to address this issue, creating potential problems for thousands of CLEC customers without a remedy for the CLEC involved. Much more needs to be discussed before Tier II is eliminated. What Tier I measures need to be changed so they are no longer diagnostic and actually have penalties associated with them? What Tier I measures need to have more weight put on them because there are significantly more transactions of that type than any other type indicating it is a market opening measure? What value is there in placing a moratorium on discussion of measures when the industry is constantly shifting and the competitive landscape consistently changing? FCTA is willing to continue this discussion in workshops, or can continue the discussions via written comments.
3. Redlines Must Accurately Reflect Agreements Reached in the Workshops
  - a. The accuracy of the ‘settlement’ redlines, as filed on March 23<sup>rd</sup>, is a demonstrable failure. Arduous and time-consuming review has revealed

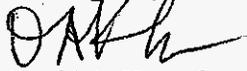
insertions and deletions that are either unsupported by the record evidence thus or are simply unindicated.

b. Examples:

- i. SQM – References to Tier I as a SEEM measure have been deleted throughout. That deletion is premature as best.
- ii. SEEM
  1. Measure 4.1.12 (Cell Correction) – original plan had the words “or zero” following “equal to the Balancing Critical Value”. They are simply gone, not shown as stricken. An early version of the collaborative matrix show that this was to be an **“Area to be subject of PSC Workshop and ultimately staff recommendation.”**
  2. Measures 4.8.1.3 thru 4.8.1.5 (Audits) – The original plan did not include any of this text. They are now simply here, not shown as underlined. An early version of the collaborative matrix show that this too was to be an **“Area to be subject of PSC Workshop and ultimately staff recommendation.”**

In addition, the Commission must retain oversight and an ability to hear from parties on these issues on an ongoing basis. We look forward to discussing these issues with you and with AT&T on Monday.

Best regards,



David A. Konuch  
Senior Counsel, Regulatory Law & Technology

ATTACHMENT 1

(From 1/15/2010 Comcast Comments)

Formatted: Indent: Left: 0.49", Right: 0.85"

Table 1: Fee Schedule for Tier 1 Per Transaction Fee Determination

Performance Measure	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	
OSS/Pre-Ordering	\$10	\$15	\$30	\$40	\$50	\$60	Formatted: Indent: Left: -3.05", Right: 0.23" Deleted: \$20 ... [1]
Ordering	\$20	\$25	\$60	\$80	\$100	\$120	Deleted: \$30 ... [2]
Service Order Accuracy	\$20	\$20	\$50	\$80	\$100	\$120	Deleted: \$20 ... [3]
Flow Through	\$40	\$45	\$80	\$180	\$200	\$240	Deleted: \$50 ... [4]
Provisioning - Resale	\$40	\$60	\$120	\$160	\$150	\$240	Deleted: \$70 ... [5]
Provisioning - UNE	\$115	\$130	\$345	\$460	\$575	\$680	Deleted: \$145 ... [6]
Maintenance and Repair - Resale	\$40	\$50	\$120	\$160	\$150	\$240	Deleted: \$70 ... [7]
Maintenance and Repair - UNE	\$115	\$130	\$345	\$460	\$575	\$680	Deleted: \$145 ... [8]
LNP	\$115	\$190	\$345	\$460	\$575	\$680	Deleted: \$385 ... [9]
Billing - BIA (see Note 1)	2%	2%	8%	8%	10%	12%	Deleted: 2% ... [10]
Billing - BIT	\$7	\$7	\$21	\$28	\$35	\$42	Deleted: \$7 ... [11]
Billing - BUOT (see Note 2)	\$0.05	\$0.05	\$0.15	\$0.20	\$0.25	\$0.30	Deleted: \$0.05
Billing - BEC (see note 3)	\$0.07	\$0.07	\$0.21	\$0.28	\$0.35	\$0.42	Deleted: \$0.05 ... [12]
IC Trunks (Trunk Group Performance)	\$25	\$30	\$75	\$100	\$125	\$150	Formatted: Indent: Left: -0.07" Deleted: \$0.07 ... [13]
Collocation	\$3,165	\$3,165	\$3,165	\$3,165	\$3,165	\$3,165	Deleted: \$45 ... [14]

Note 1: Reflects percent interest to be paid on adjusted amounts.

Note 2: Amount paid per 1000 usage records.

Note 3: Amount paid per dispute.

DOCUMENT NUMBER: DALL

05889 JUL 19 02

FPSC-COMMISSIONER OFFICE



Metric	O-3 [FT] % Flow Thru	O-9 [FOCT] FOC Timeliness	M&R-3 [MAD] Mtc Avg Duration
Comcast Proposed Change	Comcast requests increasing the LNP and Residence benchmark to 98% since AT&T 9-State is performing at 99%.	Comcast requests increasing the LNP benchmark to 97% since AT&T 9-State is performing at 99%.	CLECs recommend the product disaggregation for Local Interconnection trunk groups be changed to a benchmark as follows: Service affecting trunk groups <= 1 hour for tandem groups, and <= 2 hours for non-tandem groups.
Comcast Rationale	<p>From FCTA 9.3.09 filing -</p> <p>AT&amp;T's commercial agreement proposal for SQM and SEEMs proposes to change the benchmark standard for Percent Flow Through Service Request (O-3) - Standalone LNP Orders, to a weaker standard. This is a critical metric for cable telephony providers, which provide the highest LNP order related volume with AT&amp;T in Florida among all competitive providers. In this regard, AT&amp;T proposes to change the 95% Flow Through benchmark standard to 90% claiming that "90% benchmark represents excellent performance level". Here is an example of a crucial competitive metric - Number Portability, which governs how quickly a particular customer can switch to a new provider.</p> <p>AT&amp;T routinely meets this metric (99 percent completion), yet seeks to lower the standard to 90 percent. Instead, AT&amp;T should be required to increase the benchmark standard to 98% which AT&amp;T has shown it is capable of meeting consistently which has shown to be greater than 95% benchmark as measured from August 2008 through May 2009. In fact, in only one month during that time did AT&amp;T's flow through performance drop below 99% (October 2008 was 97.61%). In this example, AT&amp;T simply cannot justify its proposal to reduce the current 95% standard.</p> <p>Collaborative discussions Nov/Dec 2009 - No discussion regarding disaggregates 3/22/10 AT&amp;T/CompSouth Settlement - Settlement reflects keeping disaggregate at original levels. No discussion to date on Comcast increase for LNP benchmark.</p>	<p>From FCTA 9.3.09 filing -</p> <p>AT&amp;T's commercial agreement proposes to leave unchanged the current benchmark standard for the FOC Timeliness metric (O-9) for both Partial Mech/LNP, as well as interconnection trunks. The benchmark standard for partial Mech/LNP is 95% within "X", and the standard for interconnection trunks is 95% within 5 days. However, upon review of AT&amp;T's recent actual performance, there would seem to be reasonable justification to increase the benchmark standard for partial Mech/LNP from 95% within "X" to 97% within "X" given that from October 2008 through May of 2009 the actual performance in each month was greater than 98%. In addition, FCTA advocates that it is also reasonable to increase the benchmark for FOC Timeliness on interconnection trunks from 95% within 5 days, to 99% within 2 days because from the period of August 2008 through May 2009, AT&amp;T's actual performance was 100% in 7 out of 10 sample months trended.</p> <p>Collaborative discussions Nov/Dec 2009 - No discussion regarding Comcast benchmark increases, but ATT did agree with CompSouth request to shorten interval time frames for Non Mec/Email from 24 business hours to 17 business hours 3/22/10 AT&amp;T/CompSouth Settlement - Settlement reflects CompSouth asks. No discussion to date on Comcast increase for LNP benchmark.</p>	<p>From filing - researching for the rationale Collaborative discussions Nov/Dec 2009 - See Action Item 17 - discussion regarding change from parity to benchmark for interconnection trunks. No resolution 3/22/10 AT&amp;T/CompSouth Settlement - Settlement does not include benchmark for interconnection trunks</p>
SEEMS Performance Measure	Ordering- Current Comcast Proposed	Ordering- Current Comcast Proposed	Ordering- Current Comcast Proposed
Month 1	\$20 \$20	\$20 \$20	\$115 \$115
Month 2	\$25 \$25	\$25 \$25	\$130 \$130
Month 3	\$30 \$60	\$30 \$60	\$145 \$345
Month 4	\$35 \$80	\$35 \$80	\$160 \$460
Month 5	\$40 \$100	\$40 \$100	\$190 \$575
Month 6	\$45 \$120	\$45 \$120	\$230 \$690
Month 7 -	\$45 Month 1 amount multiplied by current month. (i.e: \$20 x 7 = \$140)	\$45 Month 1 amount multiplied by current month. (i.e: \$20 x 7 = \$140)	\$230 Month 1 amount multiplied by current month. (i.e: \$115 x 7 = \$805)



DOCUMENT NUMBER-DATE

5889 JUL 19 09

FPSC-COMMISSION CLERK

**Marguerite McLean**

000121A-TP

**From:** Martha Johnson [marthaj@fcta.com]  
**Sent:** Thursday, September 03, 2009 4:35 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 000121A - FCTA's Reply Comments on SQM and SEEM Redlines  
**Attachments:** 000121A - FCTA Reply Comments.pdf

**A.** The person responsible for this electronic filing is:

David A. Konuch  
 Senior Counsel, Regulatory Law and Technology  
 Florida Cable Telecommunications Association  
 246 E. 6<sup>th</sup> Avenue  
 Tallahassee, FL 32303  
 850-681-1990  
 850-681-9676  
 dkonuch@fcta.com

**B.** The docket title is: **In Re: Docket No. 000121 – Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange Telecommunications companies (BellSouth Track).**

**C.** This document is filed on behalf of the Florida Cable Telecommunications Association, Inc.

**D.** This document has a total of 19 pages.

**E.** Attached is the Florida Cable Telecommunications Association's Reply Comments on SQM and SEEM Redlines.

Thank you,

Martha Johnson  
 Regulatory Assistant  
 Florida Cable Telecommunications Association  
 246 E. 6<sup>th</sup> Avenue  
 Tallahassee, FL 32303  
 850/681-1990  
 850/681-9676 (fax)

9/3/2009

DOCUMENT NUMBER-DATE

09226 SEP-3 8

FPSC-COMMISSION D

2009 SEP 19 10 58 AM

5889 JUL 19 9

FPSC-COMMISSION CLERK

EXHIBIT  
 3



Florida Cable Telecommunications Association

Steve Wilkerson, President

September 3, 2009

**VIA ELECTRONIC FILING**

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

Re: Docket No. 000121A – In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies (BellSouth Track)

Dear Ms. Cole:

Enclosed for electronic filing in the above referenced Docket, please find the Reply Comments of the Florida Cable Telecommunications Association, Inc. on SQM and SEEM Redlines in response to the Commission's August 18, 2009 amended notice.

If you have any questions whatsoever, please do not hesitate to contact me at (850) 681-1990.

Your assistance in this matter is greatly appreciated.

Sincerely,

  
David A. Konuch  
Senior Counsel, Regulatory Law and Technology  
Florida Cable Telecommunications Association  
246 E. 6<sup>th</sup> Avenue  
Tallahassee, FL 32303  
Phone: 850-681-1990  
Fax: 850-681-9676  
dkonuch@fcta.com

Enclosures

246 East 6th Avenue • Tallahassee, Florida 32303 • (850) 681-1990 • FAX (850) 681-9676 • www.fcta.com

09226 SEP-3 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the establishment  
of operations support systems permanent  
performance measures for incumbent local  
exchange telecommunications companies  
(BellSouth Track)

Docket No. 000121A-TP

September 3, 2009

REPLY COMMENTS OF FLORIDA CABLE TELECOMMUNICATIONS  
ASSOCIATION ON SQM AND SEEM REDLINES

Florida Cable Telecommunications Association, Inc. ("FCTA")<sup>1</sup> hereby submits its  
reply comments to BellSouth Telecommunications, Inc. d/b/a AT&T Florida's ("AT&T's")  
Comments and Proposed Revisions to the BellSouth Performance Assessment and Service  
Quality Measurement Plans pursuant to the Commission's August 18, 2009 amended notice.

INTRODUCTION AND BACKGROUND

In April of 2008, AT&T's attempt to implement a new OSS system resulted in tens of  
thousands of delayed orders for CLECs, including FCTA members. The OSS failures  
resulting from the "AT&T OSS Train Wreck of 2008" as it came to be called took months to  
fix. The "Train Wreck" inconvenienced thousands of customers, delaying their switch to  
competitive providers. Unable to seamlessly switch customers who had chosen their  
service, competitors lost goodwill.

Less than six months ago, the Commission Staff recommended that SEEM penalties  
be doubled to ensure such a catastrophic failure of OSS never occurs again. *See e.g.* Notice  
of Proposed Agency Action Order Allowing AT&T to Move Forward with the Next 22-State  
OSS Release, March 23, 2009, at 2. The Commission ultimately chose not to double the  
SEEM penalties. Instead, it ordered the Staff to audit AT&T's procedures and find out

<sup>1</sup> FCTA represents cable telephony providers throughout the state of Florida who provide, by and  
large, the only facilities-based mass market telephony competition to Florida's ILECs. FCTA's five

DOCUMENT NUMBER-CAT

09226 SEP-3 8

FPSC-COMMISSION CLERK

what went wrong. The Staff found that:

- "failures were evident in AT&T's planning, organizing, directing, and control [of the OSS software release]," *id.*
- Even after AT&T "took steps" to resolve the problems in the wake of the audit, "there are still many unknowns." *Id.*

The AT&T OSS "Train Wreck of 2008," occurred even with Commission oversight and SEEMS penalties. It would not be hyperbole to rank the "Train Wreck" as among the least successful -- and most damaging to competitors -- software releases since the federal Telecommunications Act of 1996 opened markets to competition. Yet, AT&T now suggests reducing penalties and replacing the SEEM plan with a "commercial agreement" with presumably less Commission oversight. The Commission should reject AT&T's proposal to overhaul SEEMs and SQM.

Cable telephony providers and AT&T operate separate, facilities-based networks. OSS represents one of a few areas where competitors must still rely on AT&T for an input that affects the quality of a competitor's customer experience. The "Train Wreck" shows that, even 10 years after the 1996 Telecommunications Act, catastrophic OSS failures can still occur, and that SEEM and SQM still matter. Apart from the "Train Wreck," AT&T routinely misses important metrics, such as Order Completion Internal (penalties paid for 25 straight months).

This recent history provides no basis exists for removing incentives for AT&T to make its OSS better, or for removing Commission oversight. Instead, the SEEM and SQM plans should be optimized to the benefit of both competitors and AT&T. The priority should

---

largest members include Atlantic Broadband, Bright House Networks, Comcast, Cox, and Mediacom. FCTA fully supports the comments of Comcast Phone of Florida, LLC ("Comcast"), also filed today.

be to strengthening penalties for routinely missed metrics that affect competition, and to ensure there is no repeat of the 2008 OSS failures.

SEEM and SQM should also reflect changes occurring in both technology and regulation. SB 2626 deregulated some of AT&T's and the other ILECs' interactions with retail customers. At the same time, SB 2626 strengthened wholesale measures by clarifying interconnection rights of cable operators and maintaining the Commission's jurisdiction over wholesale relationships between providers. Wholesale provisions and safeguards, such as SEEM and SQM, ensure a level playing field between competitors. They take on added importance, where, as here, the Commission and legislature relies heavily on the marketplace for consumer protection. The Commission should therefore approach SEEM and SQM with the goal of optimizing intercarrier wholesale relations to benefit both the market participants and their customers.

Accordingly, the Commission should:

- Retain oversight of SEEM and SQM rather than permit AT&T to relegate these important issues to a business-to-business commercial agreement.
- Delay consideration of changes to the SEEM and SQM plans until *after* AT&T successfully concludes its next scheduled software release.
- Maintain Tier 2 payments as an added incentive for compliance.
- Reject AT&T's proposal for a cap on service affecting measures.
- Strengthen the most important and routinely missed metrics, and add additional penalties for chronic misses.
- Incorporate important new metrics affecting competition, such as number portability.
- Commission should create a way to measure wholesale provisioning now that certain consumer provisioning metrics have been lessened or done away with as a result of

ILEC deregulation and SB 2626.

- Metrics that may have become irrelevant over the passage of time could be lessened, but only if important metrics are maintained and enhanced, and new metrics added to reflect new ways in which competitors must interact to provision services for customers.
- The Commission should take its time to ensure that SEEM and SQM changes reflect the best possible outcome for subscribers by ensuring that wholesale interactions will occur smoothly. Accordingly, FCTA requests that the Commission seek comment prior to a workshop on issues set forth in Section V of FCTA's comments, to enable the Commission to collect information on various metrics and how they can be optimized for the benefit of providers and their subscribers.

#### LEGAL ANALYSIS

**I. The Commission Should Retain Oversight of SEEM and SQM Rather Than Allowing AT&T to Relegate Such Oversight to Merely a "Commercial Agreement."**

Per the latest Commission Local Competition Report, AT&T still possesses more than 1 million access lines more than the five largest FCTA members combined in Florida.<sup>2</sup> SEEM and SQM result from the reality that every line won by a competitor was once an ILEC line, and absent a strong legal regime, ILECs possess strong incentives to delay provisioning or transfer of customers. Recent history shows that AT&T's OSS failures caused inconvenience and upset to competitors and thousands of their customers over a several month period. The SEEM and SQM provisions are not intended to "sunset" after a date certain. Rather, plans like this one are intended to ensure competitive markets

---

<sup>2</sup> Competition Report at 31 shows AT&T with 2.6 million lines, while all of cable combined had approximately 1.2 million.

remain open and prevent "backsliding." The obvious question becomes, why should metrics affecting competition be decreased when they're not being met now?

AT&T's basic argument is that the SEEM and SQM plans are working and, therefore the Commission may dismantle elements of the plans. There are, at least, two problems with AT&T's argument. First, several key metrics are repeatedly and routinely missed, not to mention the 2008 massive OSS failures. Thus, it cannot be said that SEEM is functioning properly across the board. And, second, the plans originated as part of the federal section 271 market-opening process. The purpose of the plans is to prevent backsliding and ensure markets remain open. *In the Matter of Application by Bellsouth Corp., for Authorization to Provide In-Region, Interlata Services in Florida and Tennessee*, WC Docket No. 02 - 307, 17 F.C.C.R. 25828, 25924 (rel. December 19, 2002) (noting importance of ongoing monitoring by state commission to deter backsliding). Scrapping a plan designed to ensure that a market stays open based on the rationale that the market is open is a circular and meaningless argument that the Commission should reject.

**II. The Commission Should Retain Existing Measures and Enhance Penalties for Chronic Failures Because the Status Quo Is Not Working.**

Cable telephony providers engineered their facilities-based networks to minimize reliance on any inputs from ILECs. This enables cable to provide the best possible service to by controlling the customer experience end-to-end. Yet, areas remain where cable cannot control the customer experience by controlling its own facilities. SEEMS and SQM represent one such area (Preferred Carrier Freeze is another). On those issues, cable relies on the Commission for intervention and oversight through the regulatory process to maintain a level competitive playing field.

Prior to the 2008 failures ILEC OSS systems had worked relatively well for several years. But the 2008 failures directly inconvenienced cable's customers, even though cable

operated its own networks with minimal interaction with the ILECs. Worse still, the problems took months to fix, and because the problems were on AT&T's end, cable had to rely on AT&T to fix it, which led to frustration for cable telephony providers and their customers. Rather than lessening penalties, the Commission should be considering how to incent better performance, because under the current set of incentives, massive problems occurred.

Given AT&T's recent track record, no justification exists for lessening SEEM penalties or relegating them to mere commercial agreements with limited Commission oversight. AT&T highlights a handful of metrics it claims never have been missed, such as late payment penalties, as evidence that SEEM and SQM should be overhauled. (See AT&T July 10, 2009 Comments at 5). But that obscures the fact that many critical metrics, such as Order Completion Internal, are always missed. AT&T missed this important competition affecting metric for 25 straight months.

The recent track record and failures also shows that metrics frequently met should not be lessened. Nor should Tier II penalties be removed. Although the Tier II penalties are designed to provide added incentive to cure OSS deficiencies, the current penalties even with Tier II did not provide sufficient incentive to avoid the 2008 massive OSS failures.<sup>3</sup> Similarly, no justification exists for placing a cap on total penalties paid, as that would reduce incentives to perform. Rather, the plans should be updated and strengthened to reflect today's business environment.

---

<sup>3</sup> For the same reason, the Commission should delay any consideration of updates to the plans until after AT&T's next software release this fall to ensure there is no repeat of 2008's missteps.

### III. The Commission Should Strengthen and Enhance Specific Measures that Affect Competition

For many important measures, AT&T's performance is lacking currently. The Commission should take steps to strengthen measures that AT&T routinely fails to meet. This includes the following specific intervals.

A. **Order Completion Interval (P-4).** The FL PSC should revisit SEEMS payments to ensure proper financial penalty is applied to incent AT&T to correct deficiencies concerning Order Completion Interval (P-4). FCTA member Comcast reports that for this interval, AT&T has 25 months of consecutive liquidated damages as reported in the July 2009 PARIS Transmitted Payment Report. That AT&T has failed to meet this interval even once in over two years shows that the penalty provides inadequate incentive for AT&T to correct its lingering performance problems in this area.

B. **Service Order Accuracy - Resale (P-11).** In another example, Service Order Accuracy - Resale (P-11) which is where Comcast's LNP orders fit, has experienced 12 consecutive months of performance failure. Once again, this is an instance where AT&T has not been sufficiently incented with an escalating liquidated damage amount to correct the performance deficiency. This particular and recent example occurred between May of 2008 and May of 2009 as reported in the May 2009 PARIS Transmitted Payment Report.

In addition to the fact that AT&T has been unable to meet the current 95% benchmark standard currently adopted for this metric, AT&T now requests via its recent proposal replace the Commission-monitored SQM and SEEMS plans with a commercial agreement by allowing AT&T to "change the calculation" for this metric. No legal or policy basis exists for reducing this important standard. Indeed, that AT&T frequently misses this standard instead presents evidence that the standard should be strengthened rather than weakened.

#### **IV. Other Standards Should Be Increased to Reflect Improvements in Processes and Technology**

Just like microprocessors became faster each year, in theory OSS should improve over time as a result of experience and technical advances. Improvements in systems, technology and processes over the past 10 years warrant increasing the benchmark standards in key performance areas affecting competition, and by doing so, will further incent AT&T to deliver quality and timely service to its customers as a wholesale provider.

A. **Percent Flow Through Service Request (O-8).** AT&T's commercial agreement proposal for SQM and SEEMs proposes to change the benchmark standard for Percent Flow Through Service Request (O-8) – standalone LNP Orders, to a weaker standard. This is a critical metric for cable telephony providers, which provide the highest LNP order related volume with AT&T in Florida among all competitive providers. In this regard, AT&T proposes to change the 95% flow through benchmark standard to 90% claiming that "90% benchmark represents excellent performance level". Here is an example of a crucial competitive metric – number portability, which governs how quickly a particular customer can switch to a new provider.

AT&T routinely meets this metric (99 percent completion), yet seeks to lower the standard to 90 percent. Lowering the standard for this competitively sensitive metric makes no sense. To lower the standard would enable AT&T to slow roll transfers on nine percent of customers seeking to switch – inconveniencing thousands of customers at the expense of competitors.

Instead, AT&T should be required to increase the benchmark standard to 99% which AT&T has shown it is capable of meeting consistency been greater than the 95% benchmark as measured from August 2008 through May 2009. In fact, in only one month during that time did AT&T's flow through performance drop below 99% (October 2008 was

97.61%). In this example, AT&T simply cannot justify its proposal to reduce the current 95% standard.

### C. FOC Timelines

AT&T's commercial agreement proposes to leave unchanged the current benchmark standard for the FOC Timeliness metric (O-9) for both Partial Mech/LNP, as well as Interconnection trunks. The benchmark standard for Partial Mech/LNP is 95% within "X", and the standard for Interconnection trunks is 95% within 5 days. However, upon review of AT&T's recent actual performance, there would seem to be reasonable justification to increase the benchmark standard for Partial Mech/LNP from 95% within "X" to 97% within "X" given that from October 2008 through May of 2009 the actual performance in each month was greater than 98%. In addition, FCTA advocates that it is also reasonable to increase the benchmark for FOC Timeliness on interconnection trunks from 95% within 5 days, to 99% within 2 days because from the period of August 2008 through May 2009, AT&T's actual performance was 100% in 7 out of 10 sample months trended.

### D. New Metric for LNP Disconnects

FCTA proposes instituting a new metric that would measure the number of incomplete disconnects for non-specific LNP type orders that result from AT&T's application of the 10 digit trigger which causes the customer to be unable to receive calls from AT&T's serving wire center after the port is completed by the new Service Provider. FCTA members and other competitive telephone providers have experienced problems with AT&T's back-end process breakdown resulting in CLECs jointly submitting a Change Request GCUF08-22A via AT&T's CUF process.

The back-end process breakdown in AT&T's systems for these non-specific LNP order types also causes other problems such as no receipt or delayed receipt of Service Order Confirmations (SOCs), delayed completion of 911 record updates in the database for

PSAP access, delayed processing of directory listings changes, as well as delays in receiving Billing Completion Notices (BCNs) which cause the customer to receive a double bill from both AT&T and the new Service Provider until the problem has been corrected.

This double-billing creates obvious frustration for customers, leading to a loss of customer goodwill. In addition, the breakdown of the back-end systems process within AT&T requires competitors to open trouble tickets with AT&T to resolve the problems. Among FCTA members, Comcast spends monthly between 60 and 80 hours escalating the problem to AT&T to remove their switch translations. Other competitive providers spend similar amounts of time addressing this problem. There seems to be little incentive for AT&T to pursue the process breakdown. Therefore, FCTA advocates a new metric that will capture AT&T's back-end systems process breakdown and make it subject to escalating SEEMS payments until such time as the process breakdown has been addressed by AT&T.

#### V. REQUEST FOR INCLUSION OF OSS ISSUES AT WORKSHOP

In lieu of a redlined version of the plan FCTA has some general recommendations that may be best researched and vetted in a collaborative setting with Commission leadership. FCTA requests that the Commission seek comment on these issues in advance of a workshop so that parties may present their views. The industry has changed significantly since SQM and SEEMS were originally developed. A short list would include: changes to regulation at the Federal level, incumbents petitioning for lighter regulation due to changes in their market share, the rise of facilities-based competition from cable telephony providers, over-the-top-voice applications appear almost daily, search companies are purchasing number pools, several CLECs that entered business post 1996 have since consolidated or gone out of business. All of these changes warrant a look at these plans to determine if they reflect the marketplace of 2009 or the marketplace of 1999. FCTA

believes these developments warrant reflection by all parties regarding the state of the market today and a committed, concerted effort by the industry and the Commission to update these plans.

#### A. Ordering Measures

The Commission should also evaluate all of the Flow Through measures. For instance, what, if any, investment has occurred since these plans were instituted to improve Flow Through? Since there are fewer competitors today than there were when the plans were initiated would it serve the public to raise the bar on Flow Through measures to reflect the investment and the diminished usage that invested capacity must serve? Should not these interfaces be more robust as a result of industry change? Similarly, the Commission should consider consider Fully Mechanized, Partially Mechanized, and Non-Mechanized measures. The Commission should consider whether there is any reason why *all* orders cannot be mechanized, given that AT&T has had many years to automate this process.

What about standards generally? Should it still take four days to reject an order? Isn't that an overly generous time frame to say no? Why should it take five days to say yes? Isn't yes or no a decision based upon the same assessment? After being so generous in defining time frames the plans are even more generous by allowing fully 10% of those decisions to take even longer. In FCTA's view that is a windfall error rate after taking a full business week to mull things over.

In other measures the disaggregation levels are expressed in hours. For example, O-9 Firm Order Completion Timeliness, in some instances it takes hours longer to say yes (FOC) versus no (Reject). Is there difference in work content that warrants such divergence? The Commission should consider whether any factual basis exists for the time difference between FOC and reject.

## B. Call Center Responsiveness

Another area of inquiry would be the response times at call centers. These measures reflect a parity metric with the incumbent's retail consumer call centers. Is that still valid today? When these measures were developed were there retail performance metrics in place? Are those still in effect today? Is there a metric in those retail plans for call center response that a competitor might use to assess parity? If not, should there be some other more pure measure? Should this be a benchmark? As incumbents make resource allocation decisions, is poorer retail center response for telephone acceptable risk if those resources are reallocated to centers responding to services that generate higher profit margins? Perhaps the levels of abandoned calls should be the benchmark or at least analyzed to determine if there is reason to take a closer look.

## C. Provisioning Measures

Another interesting item is that the held order measure P-1 does not include disconnects. The lack of a measurement for disconnects at the wholesale level directly affects customers. How many billing complaints are generated because disconnected services are still being billed? How many new inward services are rejected, or placed into jeopardy, or subsequently held due to a lack of facilities? How many customer troubles are being generated because disconnects are not being administered and cross wiring remains in distribution frames without any service purpose? What capacity utilization tax is being paid for facilities that are not providing any service? Introducing a disconnect measure to P-1 would enable providers to monitor and respond to these concerns.

An additional anomaly appears in several measures where listing orders are excluded yet there appears to be absolutely no rationale for inclusion of listing orders in the universe being addressed in the metric. Why include an order class that should never be

part of the measured universe as an exclusion? Isn't that redundant? Is it efficient use of resources? This exclusion is present in P2-A which analyzes dispatched orders. When does a business dispatch to provide a listing?

While discussing P2-A, it should be mentioned that this measure too is overly generous. It provides a full two business days to relay an observation made during the provisioning process. In today's environment of hand-held devices linked to servers why wouldn't this observation be relayed immediately at the same speed that packets flow from one device to another? What purpose is served by waiting two days to inform a competitor that the request they made for their customer was not going to be fulfilled two days ago? Is there no need for two way flow through? Perhaps this is already happening. Perhaps it would be useful to analyze performance to this metric and adjust it for today's operating environment making the response something that occurs in minutes and not days.

For the Provisioning metrics in general there are several that reflect the measurement of Interconnection Trunks in parity with Retail Trunks. This would appear to be an outdated comparison. In today's business environment, incumbents report losses of retail land lines. While most of this goes to their own wireless subsidiaries through cord cutting, some of it is going to over the top voice applications, some of it to traditional wireline CLECs and some to cable telephony providers. One would think that the over built capacity on the incumbent network would not be growing retail trunks at all. In fact the inverse should be true and that capacity being reallocated to serve wholesale and wireless requirements. Therefore the metric should be changed to reflect that reality and all provisioning measures for Interconnection Trunks should be changed to a benchmark standard.

Similarly the LNP measures reflect a retail comparison to POTS. How is such measurement relevant in today's market? Would Winback port-ins be a more effective

comparison? The work content is exactly the same as port outs only inverted. This would more clearly reflect that an incumbent is doing for itself what it does for its competitors.

As a general rule, all of the provisioning measures should be analyzed based upon recent trends and results. On those that use parity, is that parity comparison relevant to today's market? For the others that utilize benchmarks, should the benchmarks be improved to reflect the investments made over the last decade so customers get to enjoy what they have been paying to enjoy?

#### **D. Maintenance and Repair Measures.**

Each of these measures contains exclusions for CPE or CLEC equipment causes. How are the rates of closure to these exclusions monitored? Are they reviewed for accuracy? Have they ever been reviewed for accuracy? If there is no regular audit path for such exclusion it creates an opportunity for subjective exclusions rather than objective exclusions. These can be created by misinterpretations of demarcation points, misunderstanding of electrical characteristics of CPE or CLEC provided equipment, and simply through ineffective trouble analysis. To prevent such occurrences there should be a requirement to close these trouble tickets to the originating entity, the Wholesale customer who opened the ticket. That would reflect parity with retail process. By permitting the incumbent to close out the trouble tickets without some communication of acceptance of the determination by the customer all the maintenance measures becomes suspect.

This process can become particularly egregious when one considers its impact in relation to M&R-4 (PRT). When trouble tickets are closed to the CPE exclusion and then reopened by the CLEC because there is still a trouble condition, it may once again be closed to the same disposition code. This will result in additional repeat trouble tickets, a prolonged outage for the customer, service dissatisfaction that leads to potential customer

churn, and higher costs for the CLEC and the incumbent. Administration of the application of the CPE/CLEC equipment exclusion should require communication with the CLEC prior to its application by the incumbent.

#### **E. Billing Measures**

B-5 [BUDT] – It would be valuable to review current performance trends regarding delivery of usage data to determine if it is time to improve on this benchmark measurement.

B-10 [BEC] – Other incumbents are held to a more stringent standard regarding response to billing claims. Providing 40 business days creates significant pain to competitors. By providing 40 business days competitors can be subject to interest charges for two billing cycles. The compounding effect provides additional injury. There is very little justification for an incumbent to be shedding employees that could be reallocated to improve response time in this area. The standard should be brought down to less than a month and should be measured in calendar days since the incumbents payment expectation is in calendar days not business days.

#### **F. Change Management.**

The Commission should analyze these measures to determine if benchmark improvement is warranted concerning the Change Management process.

#### **G. E911/DA Metrics.**

FCTA supports CompSouth's request that a metric for E911/DA be added. If a number is ported, but the 911 database is not updated at the same time, the telephony provider cannot fully service that customer. That would occur, for instance, if the customer changes providers and moves to a new address, and AT&T does not update the E911 database with the new address. Should the customer call 911 during a transition period when AT&T has not yet updated the 911 database, the customer's old address will show up

on the first responder's caller ID, which could lead to dispatch delays. It is FCTA's understanding that AT&T owns the 911 administrator that services Florida. Therefore, updating this database is fully within AT&T's control. Adding a metric for E911/DA will aid public safety in addition to consumer satisfaction. Competitors cannot update the database without AT&T's involvement. Accordingly, the Commission should create a new metric for E911/DA.

Respectfully submitted this 3rd day of September, 2009.



David A. Konuch  
Sr. Counsel, Regulatory Law & Technology  
Florida Cable Telecommunications Association  
246 E. 6<sup>th</sup> Avenue, Suite 100  
Tallahassee, FL 32303  
Tel: 850/681-1990  
Fax: 850/681-9676

#### CERTIFICATE OF SERVICE

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

Electronic Mail the 3<sup>rd</sup> day of September, 2009 to the following:

**AT&T/AT&T Florida**  
E. Edenfield/ R. Culppeper  
c/o Mr. Gregory Follensbee  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301-1561  
Phone: 850-577-5555  
FAX: 677-5536  
Email: greg.follensbee@att.com

**Akerman Law Firm**  
Beth Keating/Matt Feil  
106 East College Avenue, Suite 1200  
Tallahassee, FL 32301  
Phone: 850-425-1614  
FAX: 222-0103  
Email: matt.feil@akerman.com

**Cbeyond Communications, LLC**  
Charles E. (Gene) Watkins  
320 Interstate North Parkway, Suite 30  
Atlanta, GA 30339  
Phone: 678-870-2174  
FAX: 978-424-2500  
Email: gene.watkins@cbeyond.net

**ALLTEL Communications, Inc. (Ausley)**  
Jeffrey Wahlen  
c/o Ausley Law Firm  
P.O. Box 391  
Tallahassee, FL 32302  
Phone: 850-425-5471  
FAX: 222-7952

**Network Telephone Corporation**  
Margaret Ring  
3300 North Pace Blvd.  
Pensacola, FL 32505-5148  
Phone: 850-465-1748  
FAX: 850-492-0218  
Email: mhring@cavtel.com

**New South Communications, Corp.**  
Vicki Gordon Kaufman  
c/o Moyle Law Firm  
118 North Gadsden Street  
Tallahassee, FL 32301  
Phone: 850-681-3828  
FAX: 681-8788  
Email: vkaufman@moylelaw.com

**Covad Communications Company**  
Ms. Katherine K. Mudge  
7000 N. MoPac Expressway, Floor 2  
Austin, TX 78731  
Phone: 512-514-6380  
FAX: 512-514-6520  
Email: kmudge@covad.com

**DeltaCom, Inc.**  
D. Anthony Mastando  
7037 Old Madison Pike  
Huntsville, AL 35806  
Phone: 256-382-3856  
FAX: 256-382-3936  
Email: tony.mastando@deltacom.com

**Keefe Law Firm**  
Vicki Gordon Kaufman  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301  
Phone: 850-681-3828  
FAX: 681-8788  
Email: vkaufman@kagmlaw.com

**NuVox Communications, Inc.**  
Susan J. Berlin  
Two North Main Street  
Greenville, SC 29601-2153  
Phone: 864-331-7323  
FAX: (864) 331-1286

**Rutledge Law Firm**  
K. Hoffman/J. Ellis  
P.O. Box 551  
Tallahassee, FL 32302-0551  
Phone: 850-681-6788  
FAX: 681-6515

**MediaOne Florida Telecommunications**  
c/o Laura L. Gallagher, P.A.  
101 E. College Ave., Suite 302  
Tallahassee, FL 32301  
Phone: 850-224-2211  
FAX: 561-6311

**Birch of the South, Inc.**  
Mr. Chris Bunce  
2300 Main Street, Suite 600  
Kansas City, MO 64108-2415  
Phone: (816) 300-3000  
FAX: (816) 300-3850  
Email: cbunce@birch.com

**Cleartel Communications**  
Randall P. Muench/Jamie Villanueva  
12124 High Tech Avenue, Suite 100  
Orlando, FL 32817-8374  
Phone: 561-454-5041  
FAX: 877-612-3027  
Email: jvillanueva@cleartel.com

**Comcast Southern Division**  
Richard Wolf  
600 Galleria Parkway, Suite 1100  
Atlanta, GA 30339  
Phone: 678-385-5178  
FAX: 678-385-5101  
Email: richard\_wolfe@cable.comcast.com

**Competitive Carriers of the South, Inc.**  
Matthew J. Feil  
c/o Akerman Law Firm  
106 East College Avenue, Suite 1200  
Tallahassee, FL 32301  
Phone: 850-224-9634  
FAX: 222-0108

Email: sberlin@nuvox.com

**Pennington Law Firm Peter M.  
Dunbar/Howard E. Adams**  
Post Office Box 10095  
Tallahassee, FL 32302-2095  
Phone: 850-222-8533  
FAX: 222-2126  
Email: Gene@penningtonlaw.com

**Sprint Nextel**  
Douglas C. Nelson  
288 Peachtree Street, N. E., Suite 220  
Atlanta, GA 30303  
Phone: 404-649-8988  
FAX: 404-649-8980  
Email: douglas.c.nelson@sprint.com

**Time Warner Telecom of Florida, L.P.**  
Carolyn Ridley, VP Regulatory Affairs  
555 Church Street, Suite. 2300  
Nashville, TN 37219  
Phone: 615-376-6404  
FAX: 615-376-6405  
Email: Carolyn.Ridley@twtelecom.com

**Verizon Dulaney O'Roark**  
5055 N. Point Parkway  
Alpharetta, GA 30022  
Phone: 678-259-1449  
FAX: 678-259-1589  
Email: ds.oroark@verizon.com

Email: matt.feil@akerman.com

**Competitive Carriers of the South, Inc.**  
Vicki Gordon Kaufman  
c/o Keefe Law Firm, The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301  
Phone: 850-681-8828  
FAX: 681-8788  
Email: vkaufman@kagmlaw.com

**Florida Competitive Carriers Assoc.**  
c/o Moyle Law Firm  
Vicki Gordon Kaufman  
118 North Gadsden Street  
Tallahassee, FL 32301  
Phone: 850-681-8828  
FAX: 681-8788

**Florida Public Telecommunications  
Association, Inc.**  
Mr. Bruce W. Renard  
9432 Baymeadows Road, Suite 140  
Jacksonville, FL 32256-7988  
Phone: (904) 425-6050  
FAX: (904) 425-6010  
Email: brenard@fpta.com

  
\_\_\_\_\_  
David A. Konuch

Marguerite McLean

000121A-TP

**From:** Lynette Tenace [ltenace@kagmlaw.com]  
**Sent:** Monday, February 01, 2010 3:51 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Adam Teltzman; Lisa Harvey; Tracy Hatch; greg.foliensbee@att.com; kmudge@covad.com; matt.feil@akerman.com; dkonuch@fcta.com; de.oroark@verizon.com; gene@penningtonlaw.com; douglas.c.nelson@sprint.com; Carolyn.ridley@twtelecom.com  
**Subject:** Docket No. 000121A-TP  
**Attachments:** Comments of Cbeyond Communications, Inc. 02.01.10.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

Vicki Gordon Kaufman  
Jon C. Moyle, Jr.  
Keefe Anchors Gordon & Moyle  
118 North Gadsden Street  
Tallahassee, FL 32301  
(850) 681-3828  
vkaufman@kagmlaw.com  
jmoyle@kagmlaw.com

b. This filing is made in Docket No. 000121A-TP, in re investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (BellSouth Track)

c. The document is filed on behalf of Cbeyond Communications, LLD, Deltacom, Inc. and NuVox Communications, Inc.

d. The total pages in the document is 8 pages.

e. The attached document is Comments of Cbeyond Communications, Inc.

Lynette Tenace

[ltenace@kagmlaw.com](mailto:ltenace@kagmlaw.com)



**Keefe, Anchors  
Gordon & Moyle**

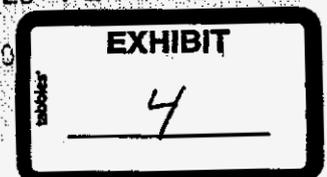
Keefe, Anchors, Gordon and Moyle, P.A.  
The Perkins House  
118 N. Gadsden St.  
Tallahassee, FL 32301  
150-681-3828 (Voice)  
150-681-8788 (Fax)  
[www.kagmlaw.com](http://www.kagmlaw.com)

The information contained in this e-mail is confidential and may be subject to the attorney client privilege or may constitute privileged work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the agent or employee responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you receive this e-mail in error, please notify us by telephone or return e-mail immediately. Thank you.

2/1/2010

DOCUMENT NUMBER-DATE  
00726 FEB-1 0

DOCUMENT NUMBER-DATE FPSC-COMMISSION  
05889 JUL 19 0



FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into the establishment  
of operations support systems  
permanent performance measures for  
incumbent local exchange  
telecommunications companies.

Docket No. 000121A-TP  
Filed: February 1, 2010

**COMMENTS OF CBeyond COMMUNICATIONS, LLC**

Cbeyond Communications, LLC (Cbeyond), hereby submits comments regarding BellSouth Telecommunications, Inc. d/b/a AT&T Florida's (AT&T) proposed revisions to its Service Quality Measurement Plan, Version 5.01 (SQM Plan) and to its Self-Effectuating Enforcement Mechanism Plan, Version 5.02 (SEEM Plan) (collectively, Plans). As grounds therefor, Cbeyond states:

1. In this docket, Staff has conducted a periodic review of the SQM and SEEM Plans adopted by the Commission in 2001. Cbeyond has participated in the various workshops as part of this review process. In addition, Cbeyond has a complaint pending (which is currently in abeyance) regarding the implementation of upcoming AT&T software releases.

2. Cbeyond uses AT&T's operations support systems (OSS) to place orders, receive confirmation of such orders, receive clarifications, receive order rejects, and perform a myriad of functions which are integrally related to its business operations and its ability to serve its customers. The Commission recognized in Order No. PSC-01-1819-FOF-TP (OSS Order) the importance of ensuring that all telecommunications providers are treated fairly to ensure effective competition. The Plans are critical to this goal.

3. Thus, Cbeyond has the following comments and proposals as the Commission reviews the Plans. First, Cbeyond proposes quarterly, rather than monthly, assessments of SEEM penalties, while maintaining monthly reporting on all metrics. Quarterly assessments of SEEM

penalties will help address AT&T's concern about being unfairly penalized due to the determination of parity based on small statistical samples of data.

4. Quarterly assessments of SEEM will also reduce AT&T's costs of administering the SEEM plan because calculations and payments would occur four times a year rather than twelve times a year.

5. The current SQM and SEEM plan statistics capture and penalize AT&T for what the Commission could determine to be willful violations of the law. (See, OSS Order at pp. 122-128). The OSS Order states:

We also find that should BellSouth report that it has missed benchmarks set forth in the approved plan, such could be deemed to constitute a prima facie showing that the company has willfully failed to comply with our performance measures....

*Id.* at 127.

6. The current fee schedule increases the fee assessed, per miss, on a monthly basis but stops increasing the fee assessed after six consecutive month misses. Attachment A, Table 1 illustrates the current fee schedule. A trend of failures or repeated failures provides increased evidence that AT&T's actions are willful violations and that the current fee schedule is insufficient to provide AT&T with the necessary incentive to stop its willful violations of the law. As shown in Comcast's January 15<sup>th</sup> filing in this docket, AT&T has missed certain parity metrics for upwards of 25 consecutive months. This obviously means that the current fee schedule is insufficient to incent AT&T to stop its willful violations of the law. To address this fact, the fee, per miss, set forth in the fee schedule should not stop after six months as it currently does but should continue to increase until AT&T eliminates the discriminatory conditions. Cbeyond has provided a proposed schedule in Attachment A, Table 2.

7. Cbeyond also proposes that a payment de-escalation process be implemented. The escalation of payments for consecutive quarters of non-compliant service would be matched quarter for quarter with payment de-escalation for compliant service. For example, if AT&T has three consecutive quarter "misses," it would make payments that escalate from quarter 1 to quarter 3 as shown in Table 2. If, in the next quarter, AT&T service meets the standard, AT&T would make no payment. A payment "indicator" would de-escalate down from quarter 3 to quarter 2. However, if AT&T misses the following quarter, it would make payment at the quarter 2 level of Table 1 because that is where the payment "indicator" presently sits. If AT&T misses again the following month, it would make a payment that escalates back to the quarter 3 level. The payment level will de-escalate back to the original quarter 1 level only upon compliant service sufficient to move the payment "indicator" back to the quarter 1 level. This payment de-escalation process is necessary to ensure that AT&T truly eliminates discriminatory conditions and does not just implement a temporary fix in order to reset the SEEM payment level.

**WHEREFORE**, Cbeyond proposes that the current six-month escalating fee schedule be restructured into quarterly assessments and extended to twelve months as shown in the attached Table 1, and that a payment de-escalation process be implemented for the reasons set forth above.

s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman  
Keefe Anchors Gordon & Moyle  
118 North Gadsden Street  
Tallahassee, FL 32301  
(850) 681-3828 (Voice)  
(850) 681-8788 (Fascimile)  
[vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)

Charles E. (Gene) Watkins  
Cbeyond Communications, LLC  
320 Interstate North Parkway, Suite 300  
Atlanta, Georgia 30339  
(678) 370-2174 (Voice)  
(678) 424-2500 (Fascimile)  
[gene.watkins@cbeyond.net](mailto:gene.watkins@cbeyond.net)

Attorneys for Cbeyond

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 1<sup>st</sup> day of February, 2010 to the following:

Adam Teitzman  
Staff Counsel  
Lisa Harvey  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0580  
[ateitzma@psc.state.fl.us](mailto:ateitzma@psc.state.fl.us)  
[lsharvey@psc.state.fl.us](mailto:lsharvey@psc.state.fl.us)

Douglas C. Nelson  
Sprint Nextel  
233 Peachtree Street, N. E.  
Suite 2200  
Atlanta, GA 30303  
[douglas.c.nelson@sprint.com](mailto:douglas.c.nelson@sprint.com)

David A. Komuch  
Florida Cable Telecommunications  
Association, Inc.  
246 E. 6th Avenue, Suite 100  
Tallahassee, FL 32303  
[dkomuch@fcta.com](mailto:dkomuch@fcta.com)

Dulaney O'Roark, III  
Verizon  
Six Concourse Parkway  
Suite 3200  
Atlanta, GA 30328  
[de.oroark@verizon.com](mailto:de.oroark@verizon.com)

Gregory Follensbee, Tracy Hatch  
AT&T Florida  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301-1561  
[greg.follensbee@att.com](mailto:greg.follensbee@att.com)  
[thatch@att.com](mailto:thatch@att.com)

Katherine K. Mudge  
Covad Communications Company  
7000 N. MoPac Expressway, Floor 2  
Austin, TX 78731  
[kmudge@covad.com](mailto:kmudge@covad.com)

Matthew Feil  
Akerman Senterfitt  
105 East College Ave., Suite 1200  
Tallahassee, FL 32301  
[matt.feil@akerman.com](mailto:matt.feil@akerman.com)

Howard E. Adams  
Pennington Law Firm  
215 S. Monroe Street, 2<sup>nd</sup> Floor  
Tallahassee, FL 32301  
[gene@penningtonlaw.com](mailto:gene@penningtonlaw.com)

Carolyn Ridley, VP Regulatory Affairs  
Time Warner Telecom of Florida, L.P.  
555 Church Street, Suite 2300  
Nashville, TN 37219  
[Carolyn.ridley@twtelecom.com](mailto:Carolyn.ridley@twtelecom.com)

s/Vicki Gordon Kaufman  
Vicki Gordon Kaufman

**Attachment A**

**Table 1: Current Fee Schedule for Tier 1 per Transaction Fee Determination**

Performance Measures	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
OSS/Pre-Ordering	\$10	\$15	\$20	\$25	\$30	\$35
Ordering	\$20	\$25	\$30	\$35	\$40	\$45
Service Order Accuracy	\$20	\$25	\$30	\$35	\$40	\$45
Flow Through	\$40	\$45	\$50	\$55	\$60	\$65
Provisioning - Resale	\$40	\$45	\$50	\$55	\$60	\$65
Provisioning - UNE	\$115	\$130	\$145	\$160	\$190	\$230
Maintenance and Repair - Resale	\$40	\$45	\$50	\$55	\$60	\$65
Maintenance and Repair - UNE	\$115	\$130	\$145	\$160	\$190	\$230
LNP	\$115	\$190	\$385	\$460	\$535	\$615
Billing - BIA (see Note 1)	2%	2%	2%	2%	2%	2%
Billing - BIT	\$7	\$7	\$7	\$7	\$7	\$7
Billing - BU DT (see Note 2)	\$0.046	\$0.046	\$0.046	\$0.046	\$0.046	\$0.046
Billing - BEC (see Note 3)	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07	\$0.07
IC Trunks (Trunk Group Performance)	\$25	\$30	\$45	\$65	\$80	\$125
Collocation	\$3,165	\$3,165	\$3,165	\$3,165	\$3,165	\$3,165

Note 1: Reflects percent interest to be paid on adjusted amounts.

Note 2: Amount paid per 1000 usage records.

Note 3: Amount paid per dispute.

**Ceyond SEEMs Proposal**

**Table 2: Proposed Fee Schedule for Tier 1 per Transaction Fee Determination.**

Performance Measures	Quarter 1	Quarter 2	Quarter 3	Quarter 4 & >
OSS/Pre-Ordering	\$15	\$30	\$90	\$270
Ordering	\$25	\$40	\$120	\$360
Service Order Accuracy	\$25	\$40	\$120	\$360
Flow Through	\$45	\$60	\$180	\$540
Provisioning -- Resale	\$45	\$60	\$180	\$540
Provisioning -- UNE	\$130	\$190	\$570	\$1,710
Maintenance and Repair -- Resale	\$45	\$60	\$180	\$540
Maintenance and Repair -- UNE	\$130	\$190	\$570	\$1,710
LNP	\$190	\$535	\$1,605	\$4,815
Billing -- BIA (see Note 1)	2%	2%	2%	2%
Billing -- BIT	\$7	\$7	\$7	\$7
Billing -- BUDT (see Note 2)	\$0.046	\$0.046	\$0.046	\$0.046
Billing -- BEC (see Note 3)	\$0.07	\$0.07	\$0.07	\$0.07
IC Trunks (Trunk Group Performance)	\$30	\$80	\$240	\$720
Collocation	\$3,165	\$3,165	\$3,165	\$3,165

Note 1: Reflects percent interest to be paid on adjusted amounts.

Note 2: Amount paid per 1000 usage records.

Note 3: Amount paid per dispute.

### Cbeyond Proposal: Appendix A: Fee Schedule -- Quarterly Calculations

Currently, data for each metric is gathered and reported monthly and analyzed monthly for the purpose of SEEM payments. Cbeyond proposes that data for each metric continue to be gathered and reported monthly but that it be analyzed for the purpose of SEEM payments on a quarterly basis. SEEM calculations, statistical analysis and payments would be done on rolled up quarterly data under Cbeyond's proposal. This change to a quarterly SEEMs process would be a significant change that would reduce AT&T's administrative burden of performing SEEM analysis and payments by 300% but would increase the risk that AT&T could intentionally or inadvertently provide discriminatory service and not be penalized. For example, AT&T could deliberately provide a given CLEC bad service for one strategically selected day out of a quarter and not fail the parity measure because the errors, misses, or discrimination of that one day would be weighted against the performance of 90 days instead of 30 days. Hence, certain changes would be necessary to adapt the current fee schedule to the changed assessment time period and to ensure that adequate incentives to provide non-discriminatory service are maintained.

The current month 2 fee schedule for failure to meet parity measures would still be applied to the averaged or totaled three months of data under Cbeyond's proposal, thereby maintaining the current average fee (i.e., month 2 would be the midpoint for the first three consecutive missed quarters) for "initial" noncompliance with the parity measures. What is different in the Quarterly SEEM calculations and payment methodology versus the current Monthly SEEM calculation and payment methodology is the definition "initial." "Initial" is changed from one month to three months, and therefore the quarterly methodology is more forgiving to AT&T. The current month 5 fee schedule for failure to meet parity measures is applied to the averaged or totaled 2<sup>nd</sup> consecutive quarter data thereby maintaining the current average fee for this period (i.e., month 5 is the midpoint for 2<sup>nd</sup> consecutive missed quarter). The penalties that AT&T must pay if it fails parity measures in consecutive quarters after quarter 2 is increased arithmetically for each consecutive quarter of failures (i.e., a 3-fold increase for each consecutive 3 month failure). On average, this payment structure maintains the current penalty structure for the first 6 months of consecutive misses. However, this penalty structure does not stop the escalation of fees after 6 months but continues to increase the fees for consecutive misses for an additional six months and therefore would increase the penalties if AT&T were to habitually fail any parity standard for a time period longer than six months.

A payment de-escalation process is also proposed under Cbeyond's plan. The escalation of payments for consecutive quarters of non-compliant service is matched quarter for quarter with de-escalation of payments for compliant service. For example, if AT&T has 3 consecutive quarter "misses," it will make payments that escalate from quarter 1 to quarter 3 as shown in Table 2. If, in the next quarter, service meets the standard, AT&T makes no payment. A payment "indicator" de-escalates down from quarter 3 to quarter 2. However, if AT&T misses the following quarter, it will make payment at the quarter 2 level shown in Table 2 because that is where the payment "indicator" presently sits. If AT&T misses again the following month, it will make a payment that escalates back to the quarter 3 level. The payment level will de-escalate back to the original quarter 1 level only upon compliant service sufficient to move the payment "indicator" back to the quarter 1 level. This payment de-escalation process is necessary to ensure that AT&T truly eliminates discriminatory conditions and does not just implement a temporary fix in order to reset the SEEM payment level.

Tier 2 metrics - no Tier 1 remedy	Description	Tier 1 (month	
		3,4,5,6)	Tier 2
ARI	OSS 1 Response Interval (Pre-Ordering) LENS/Enhanced Verigate		\$ 6.00
ARI	OSS 1 Response Interval (Pre-Ordering) LEX		\$ 6.00
ARI	OSS 1 Response Interval (Pre-Ordering) TAG/XML/XML Gateway		\$ 6.00
ARI	OSS 1 Response Interval (Maintenance & Repair)		\$ 6.00
IA	OSS 2 OSS Interface Availability (Pre-Ordering/Ordering) Regional Per OSS Interface		\$ 30.00
IA	OSS 2 OSS Interface Availability (Maintenance & Repair) Regional Per OSS Interface		\$ 30.00
OAAT	O-12 Average Answer Time - Ordering Centers - CLEC Local Carrier Service Center		\$ 60.00
NT	CM-1 Timeliness of Change Management Notices - Region		\$ 1,000.00
DT	CM 3 Timeliness of Documentation Associated with Change - Region		\$ 1,000.00
SEC	CM6 Percentage of Software Errors Corrected in "X" Business Days- Region		\$ 1,000.00
CRA	CM7 Percentage of Change Requests Accepted or Rejected Within 10 Days - Region		\$ 1,000.00
SCRI	CM11 Percentage of Software Change Requests Implemented Within 60 Weeks of Prioritization - Region		\$ 1,000.00

**Tier 2 metric - remedy more than Tier 1 remedy**

Service Order Accuracy	20,20,20,20	\$ 60.00
Ordering	30,35,40,45	\$ 60.00
Flow - Through	50,55,60,65	\$ 120.00
Collocation	\$ 3,165.00	\$ 9,495.00



DOCUMENT NUMBER-DATE

15889 JUL 19 9

FPSC-COMMISSION CLERK