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COMMISSION
CLERK

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

DATE: August 5, 2010

TO: Office of Commission Clerk (Cole)

FROM: Office of Auditing and Performance Analysis (Harvey, Hallenstein) *HH*
Office of the General Counsel (Teitzman, Evans) *AT Pere* *DM*

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: 08/17/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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

Case Background

The Commission adopted a wholesale Performance Assessment Plan (Plan) for the purpose of monitoring performance levels of Operations Support Systems (OSS) provided to Competitive Local Exchange Companies (CLECs) by Order No. PSC-01-1819-FOF-TP, issued September 10, 2001, in Docket No. 000121A-TP. The Order also recognized 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.

DOCUMENT NUMBER-DATE

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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 payments) and to the State of Florida (Tier 2 payments) when AT&T's performance fails to meet performance standards. The SQM Plan currently consists of 50 measurements, of which 35 measures have applicable SEEM payments if AT&T fails to meet the performance standards as agreed by the parties and approved by the Commission.

AT&T is required to participate in review cycles to evaluate AT&T's Performance Assessment Plan, pursuant to Order No. PSC-01-1819-FOF-TP. The purposes of the reviews are to gauge the effectiveness of AT&T's performance measures and to determine whether the current remedy structure is effective in driving AT&T's performance toward the required standards. On May 15, 2009, pursuant to an issued Notice in the docket file, Commission staff initiated its fourth review of the Performance Assessment Plan. The Notice requested that interested parties to the docket file proposed redline changes (additions and deletions) to the Performance Assessment Plan (SQM and SEEM Plans). On July 10, 2009, AT&T and the Competitive Carriers of the South (CompSouth) each filed redline changes.

On August 5, 2009, AT&T initiated collaborative conference calls between AT&T and CLECs to review the proposed changes submitted to staff.¹ The initial AT&T conference call commenced on August 17, 2009, with subsequent weekly calls through the month of September.

On October 1, 2009, staff conducted a conference call with AT&T and interested parties to determine the progress made through the collaborative effort. On the call, the parties requested that staff initiate informal Commission workshops to discuss in detail the areas of agreement and disagreement. Staff workshops and collaboration is the process that has been followed in each of the three previous reviews with successful results. The first workshop for the current review was conducted on November 9 and 10, 2009, with a subsequent workshop conducted on December 16 and 17, 2009. Approximately 15 parties are participating in the review, including representatives from CompSouth, Saturn Telecommunications Services (STS), and Florida Cable Telecommunications Association (FCTA).²

On March 22, 2010, AT&T and CompSouth filed a Settlement Agreement and revised SQM and SEEM Plans. Both AT&T and CompSouth stated that their settlement embodied all of the agreements made by all parties through the Commission workshop process. However, on a March 24, 2010, conference call with Commission staff, FCTA and STS opposed the agreement and requested additional time to assess the agreement in its entirety.

¹ Notification was provided via AT&T Accessible Letter number CLECSE09-134, dated August 5, 2009, re: (BUSINESS PROCESSES) (Call) Collaborative to Discuss Proposed Changes to Service Quality Measures (SQMs) and Self Effectuating Enforcement Mechanisms (SEEM).

² FCTA represents cable telephony providers throughout the state of Florida. FCTA's five largest members include Atlantic Broadband, Bright House Networks, Comcast, Cox, and Mediacom.

On July 9, 2010, AT&T and CompSouth filed First Revised SQM and SEEM Plans replacing the attachments filed with the original Settlement Agreement filed on March 22, 2010. The revised SQM and SEEM Plans reflect the agreement reached with STS. The First Revised SQM and SEEM Plans are incorporated into the Settlement Agreement between AT&T and CompSouth.

On July 19, 2010, FCTA filed a letter identifying issues still in dispute. On July 19, 2010, staff held a meeting to discuss these issues. During the meeting the parties agreed to further negotiations. On August 2, 2010, FCTA and AT&T filed a Second Revised SQM and SEEM Plan with the Commission. The Second Revised SQM and SEEM Plans replace the previously filed versions and will be incorporated into the Settlement Agreement filed on March 22, 2010, by CompSouth. The Settlement Agreement and the Second Revised SQM and SEEM Plans reflect the agreements reached between AT&T, CompSouth, STS and FCTA.

This recommendation addresses whether the Commission should accept the Settlement Agreement and the Second Revised SQM and SEEM Plans. Additionally, Issue 2 of this recommendation addresses a Motion AT&T filed on October 16, 2009 to remove Tier 2 penalties.

Jurisdiction

The Commission is vested with jurisdiction over this matter pursuant to Section 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 the Commission approve the March 22, 2010, Settlement Agreement and the August 2, 2010, Second Revised SQM and SEEM Plans?

Recommendation: Yes. Staff recommends that the Commission approve the March 22, 2010, Settlement Agreement and the August 2, 2010, Second Revised SQM and SEEM Plans. **(Harvey, Hallenstein)**

Staff Analysis: This Commission has jurisdiction over wholesale competition and has the responsibility to ensure that AT&T is providing nondiscriminatory wholesale services at parity. To ensure nondiscriminatory treatment at the wholesale level, AT&T pays penalties for failure to meet key performance measures as defined in SQM and SEEM Plans. AT&T is required to participate in review cycles which evaluate SQM and SEEM Plans, pursuant to Order No. PSC-01-1819-FOF-TP. Commission staff is currently holding its fourth review since the Plans were first implemented in September 2001. Staff's current review was initiated in May 2009, when proposed changes were solicited from parties.

From August to September 2009, AT&T, on its own initiative, and interested parties to the docket, attempted to negotiate and resolve the proposed changes to the SQM and SEEM Plans that were submitted to staff. After failed negotiations, the parties requested that staff initiate informal Commission workshops to discuss in detail the areas of agreement and disagreement. Staff conducted workshops in November and December 2009 with approximately 15 parties participating, including representatives from CompSouth, STS, and FCTA.

At the conclusion of the workshops, the parties expressed further interest in working together to resolve the remainder of the issues with a goal of bringing a settlement agreement back to the Commission for approval. On March 22, 2010, AT&T and CompSouth filed a Settlement Agreement and Revised SQM and SEEM Plans in this docket. STS and FCTA did not participate in the settlement negotiations, and both opposed this agreement. However, in June 2010, after further negotiations, AT&T and STS were able to consummate an agreement. The First Revised SQM and SEEM Plans were filed with the Commission on July 9, 2009 reflecting this agreement.

On August 2, 2010, FCTA was also able to reach an agreement with AT&T. The Second Revised SQM and SEEM Plans document the changes mutually agreed to by all parties. The Second Revised SQM and SEEM Plans were filed on August 2, 2010, and replaced the First Revised SQM and SEEM Plans.

Settlement Agreement

The Settlement Agreement filed on March 22, 2010, by CompSouth is incorporated by reference and was filed as Document No. 02046-10. The Settlement Agreement was entered into by the parties because of AT&T's desire to abolish Tier 2 and non-service impacting penalties associated with the SEEM Plan in each of the nine states formerly comprising the BellSouth states. CompSouth, FCTA, and other parties sought assurances that AT&T wholesale service quality would not degrade if the Commission decided to abolish Tier 2 penalties. Additionally,

the parties desired to create certainty for a specific period of time, as it relates to the SQM and SEEM Plans, in each of the nine former BellSouth states.

A summary of the provisions of the settlement which includes seven specific terms is provided below:

1. Subject to approval of the state regulatory authority, the terms of the settlement apply to each of the nine former BellSouth states.
2. Subject to approval of the state regulatory authority, the parties have agreed to modifications of the SQM and SEEM Plans which are attached to the Settlement Agreement with changes noted.
3. AT&T will be responsible for seeking approval from other state Commissions for the revised SQM and SEEM Plans and the Settlement Agreement. Parties will not oppose the obtaining of approvals.
4. The Settlement Agreement will not preclude a party from participating in state public utility commission investigations involving SQM or SEEM Plan for the term of the settlement.
5. The term of the settlement is for a period of four (4) years from the date of the Commission approval. During this term parties will not seek any non-administrative changes in the revised SQM and SEEM Plans. Additionally, the parties will not seek any changes or challenges to state regulatory authority to the extent the state regulatory authority has such jurisdiction to adopt or enforce the revised SQM and SEEM Plans.
6. The Settlement Agreement and revised SQM and SEEM Plans are not effective until approved by state regulatory authority in a final non-appealable order without any modification. Until the Settlement Agreement becomes effective, the parties agree to abide by existing Commission-approved SQM and SEEM Plans. Commencing with the first full data month after the revised SQM and SEEM Plans become effective in a state, the failure month count for the Tier 1 Fee schedule will be reset to month 1 for all remedied metrics.
7. Parties agree not to initiate an audit of the revised SQM or SEEM Plan for eighteen months after the start of the settlement term. This paragraph shall not affect the ability of a state regulatory authority to audit as it deems necessary.

Second Revised SQM and SEEM Plans

The Second Revised SQM and SEEM Plans filed on August 2, 2010, replaced the previously filed Plans³ in their entirety and are incorporated into the Settlement Agreement filed on March 22, 2010. A copy of the Second Revised SQM and SEEM Plans are incorporated into this recommendation by reference, as filed in this docket as Document No. 06283-10.

³ On March 22, 2010, CompSouth and AT&T filed a Settlement Agreement which included Revised SQM and SEEM Plans as attachments. The July 9 filing by AT&T replaced these attachments with the First Revised SQM and SEEM Plans. The August 2, 2010, filing replaced these attachments with the Second Revised SQM and SEEM Plans.

The SQM Plan has been streamlined to eliminate four performance measures which the parties believe are no longer relevant. Additionally, one new performance measure was added. Some changes were also made to either the calculation or benchmarks for several other measures in the SQM Plan. In addition to changes to the performance measures, the SQM Plan incorporates some changes to the Audit and Dispute Resolution Policy section. The main change limits AT&T's responsibility to pay for only one audit per version of the SQM Plan. Changes have also been made to streamline the AT&T Policy on Reposting Performance Data and the AT&T Data Notification Process.

The SEEM Plan contains the major changes occurring during this review cycle. SEEM Plan revisions include the elimination of Tier 2 remedies, and in return, an increase to Tier 1 remedies. Parties have agreed to increase Tier 1 remedies for specific performance measurements by 20 to 35 percent, over current Tier 1 levels, when AT&T fails to meet the performance measurement standards for three consecutive months. The 20 to 35 percent increase is triggered commencing with the third month of failure and continuing with each consecutive month of failure through month six. This revision is similar in structure to the methodology employed by Tier 2 remedies in that AT&T is subject to increased remedies when AT&T fails to meet performance measurement standards for three consecutive months or more.

The parties also eliminated several provisions in the SEEM Plan that impose penalties on AT&T for performance activities that do not have direct impact on the level of service provided to the CLEC. Examples of these non-service impacting penalties include fines for remitting remedy payments after the due date and fines for reposting or late posting performance measurement results to AT&T's performance measurement website.

The SQM and SEEM Plans were also revised to reflect administrative and technological changes which have occurred since the Commission's approval of the Plan in July 2007. These changes include replacing references to BellSouth with AT&T and replacing references to outdated system interfaces.

Staff's Position

Staff believes the Settlement Agreement filed March 22, 2010, and Second Revised SQM and SEEM Plans filed August 2, 2010, are acceptable. Staff believes removal of Tier 2 remedies is acceptable given that Tier 1 remedies were increased to maintain an appropriate financial incentive to ensure AT&T's level of service to CLECs is not diminished.

Staff notes that under the current SQM and SEEM Plans there are 27 measures subject to both Tier 1 and Tier 2 remedies and an additional eight measures that are Tier 2 only. These eight measurements are unique wherein they measure either system or process performance as a whole and failures cannot be attributed to an individual CLEC. Several of the Tier 2 only measures include the Change Management measures which have been the subject of many discussions by the parties over the past several years. While staff is concerned about the removal of Tier 2 remedies from these measures, we are satisfied that the data for these performance measurements will still be reported to the Commission for monitoring.

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Commission staff would note that the Settlement Agreement also precludes parties from seeking any non-administrative changes to the SQM and SEEM Plans for a four year period from the date of Commission approval. However, nothing precludes the Commission from seeking such changes should the need arise. Additionally, staff believes Commission oversight is maintained through the data reporting and audit provisions in the SQM and SEEM Plans.

Conclusion

Staff recommends that the Commission accept the Settlement Agreement filed on March 22, 2010, and the Second Revised SQM and SEEM Plans filed on August 2, 2010.

Issue 2: Should the Commission grant AT&T's October 16, 2009 Motion for Expedited Approval of Lifeline Outreach funding and modification of SEEM penalty payments?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, staff believes AT&T's Motion is rendered moot. Additionally, AT&T should retain the Tier 2 payments that have accrued since January 2010, and deposit \$250,000 in the AT&T Florida Community Service Fund. **(Teitzman, Evans)**

Staff Analysis: On October 16, 2009, AT&T filed a Motion with the Commission for expedited approval of Lifeline Outreach Funding and modification of SEEM penalty payments. In its Motion, AT&T requested that Tier 2 remedy payments be eliminated because they are unfairly discriminatory, unreasonably punitive, and are no longer appropriate based on market conditions. AT&T argued that competition is firmly entrenched, and, as a result, Tier 2 payments no longer serve their intended purpose and should be eliminated.

As a compromise to the elimination of Tier 2 payments, AT&T proposed a one-time voluntary contribution of \$250,000 to be deposited in the AT&T Florida Community Service Fund. The purpose of the Community Service Fund is to promote the awareness of the Lifeline Assistance and Link-up programs. According to AT&T, the Community Service Fund is now depleted and is in need of additional funding in order for Lifeline outreach efforts to continue.

Pursuant to Order No. PSC-10-0016-PCO-TP, issued on January 5, 2010, the Commission ordered that any ruling on AT&T's Motion be deferred until the review of AT&T's wholesale Performance Assessment Plan is completed, and all proposed changes to the Plan can be brought back, as a whole to the Commission for decision. The Commission determined that AT&T's Motion was premature and it would be inappropriate to make a decision on one part of the Performance Assessment Plan without thoughtful consideration to how other parts are affected.

Although the Commission deferred a ruling on AT&T's Motion, the Commission did order that AT&T should hold, as a corporate undertaking, any Tier 2 payments that became due and payable under the current SEEM Plan pending final resolution. A review of the transcript from the December 15, 2009, Agenda Conference, indicates that the Commission discussed the corporate undertaking as a "safeguard" for all parties involved.⁴

In Issue 1, staff is recommending that the Commission accept the March 22, 2010, Settlement Agreement and the Second Revised SQM and SEEM Plans. In these agreements, parties have agreed to eliminate Tier 2 and increase Tier 1 penalties. Staff believes the increase in Tier 1 remedies is an appropriate financial incentive to warrant AT&T's request to eliminate Tier 2 remedies. As a result, upon approval of the Settlement Agreement and the Second Revised SQM and SEEM Plans, AT&T's October 16, 2009 Motion to eliminate Tier 2 remedies is rendered moot.

Additionally, staff believes that if the Commission approves Issue 1, AT&T should retain the Tier 2 payments that have accrued during the pendency of this matter. Staff notes that

⁴ Transcript at pages 66 and 69.

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AT&T has confirmed to staff that it will honor its commitment to make a one-time voluntary contribution of \$250,000 to be deposited in the AT&T Florida Community Service Fund.

Conclusion

If the Commission approves staff's recommendation in Issue 1, staff believes AT&T's Motion is rendered moot. Additionally, AT&T should retain the Tier 2 payments that have accrued since January 2010, and deposit \$250,000 in the AT&T Florida Community Service Fund.

Issue 3: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation, 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. The revisions to the SQM and SEEM Plans should be implemented within 60 days from the date of the consummating order. This docket should remain open pending the implementation of the Commission's decision and for purposes of future performance measure monitoring. **(Teitzman, Evans)**

Staff Analysis: If the Commission approves staff's recommendation, 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. The revisions to the SQM and SEEM Plans should be implemented within 60 days from the date of the consummating order. This docket should remain open pending the implementation of the Commission's decision and for purposes of future performance measure monitoring.