

Marguerite McLean

000121A-TP

From: Martha Johnson [marthaj@fcta.com]
Sent: Wednesday, September 15, 2010 4:56 PM
To: Filings@psc.state.fl.us
Cc: David Konuch; Adam Teitzman; Carolyn Ridley; gene.watkins@cbeyond.net; D. Anthony Mastando; de.oroark@one.verizon.com; Douglas Nelson; gdiamond@covad.com; Jerry Hallenstein; Katherine Mudge; Beth Keating; Lisa Harvey; matt.feil@akerman.com; Robert Culpepper ; Susan Berlin; Tracy Hatch; Vicki Kaufman; Greg Follensbee; maryrose.sirianni@att.com; Pauline Evans
Subject: Docket No. 000121A - FCTA's Motion to Clarify Order No. PSC-10-0545-PAA-TP
Attachments: 000121a - FCTA's Motion to Clarify Order.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. 6th 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. (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 ____ pages.

E. Description of document: FCTA's Motion to Clarify Order No. PSC-10-0545-PAA-TP.

Thank you,

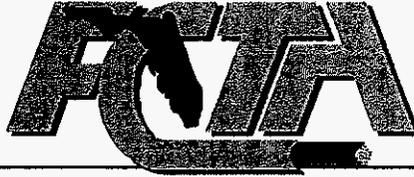
Martha Johnson
Regulatory Assistant
Florida Cable Telecommunications Association
246 E. 6th Avenue
Tallahassee, FL 32303
850/681-1990
850/681-9676 (fax)

DOCUMENT NUMBER DATE

07749 SEP 15 2010

FPSC-COMMISSIONER (P) (E)

9/15/2010



Florida Cable Telecommunications Association

Steve Wilkerson, President
September 15, 2010

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.

Dear Ms. Cole:

Enclosed for electronic filing in the above referenced Docket, please find the Florida Cable Telecommunications Association, Inc.'s Motion to Clarify Order No. PSC-10-0545-PAA-TP.

FCTA has consulted with counsel for AT&T with respect to this Motion, and AT&T's counsel has indicated that it has no objection to the substance of the requested amendatory order. However, AT&T's counsel would prefer that FCTA file the motion after September 15, 2010 to allow the underlying order to become final and remove so that FCTA's filing not be construed as a formal protest of the order. However, as it clear from the text of the order, FCTA's motion is not a formal protest of the order, which FCTA is on record supporting.

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,

A handwritten signature in black ink, appearing to read 'D. Konuch', is written over a horizontal line.

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

Enclosures

DOCUMENT # 000121A
07749 SEP 15 09
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 carriers.)

Docket No.: 000121A-TP

Filed: September 15, 2010

**FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION
MOTION TO CLARIFY
ORDER NO. PSC-10-0545-PAA-TP**

Florida Cable Telecommunications Association ("FCTA"), pursuant to Rule 28-106(1), Florida Administrative Code, hereby respectfully requests that the Florida Public Service Commission issue an amendatory order to clarify that the settlement provisions of Order No. PSC-10-0545-PAA-TP ("PAA Order") only pertain to the parties that executed the settlement with AT&T and not to non-signatory parties to this docket such as the FCTA and its members. By filing this Motion to Clarify, FCTA is not objecting to or in any way interfering with the implementation of the Second Revised SQM and SEEM Plans filed on August 2, 2010 and approved by the PAA Order. In support of this Motion, FCTA states:

1. On August 25, 2010, this Commission issued the PAA Order in order to approve and implement revised SQM and SEEM plans. The FCTA was an active participant in the process that led to the development and submission of the Second Revised SQM and SEEM plans that were approved by the PAA Order. The FCTA's involvement in the development of permanent performance metrics for the ongoing evaluation of the incumbent local exchange carrier ("ILEC") operations support systems ("OSS") has been ongoing at least since the FCTA was granted formal party status in Docket No. 00121 before this sub-docket for AT&T's OSS

DOCUMENT NUMBER DATE

07749 SEP 15 2010

FPSC-COMMISSION OF ENERGY

was established. Order No. PSC-00-0799-PCO-TP (April 24, 2000) (order granting FCTA intervention); PSC-02-0503-PCO-TP (April 11, 2002) (order establishing sub-dockets).

2. While FCTA was an active participant in the development and filing of the Second Revised SQM and SEEM plans, FCTA was *not* a party to the Settlement Agreement filed by CompSouth on March 22, 2010. *See* PSC Document No. 02046-10, March 22, 2010 (hereinafter, "Settlement Agreement"). This Settlement Agreement, by its expressed terms, was only "made and entered by and between BellSouth Telecommunications, Inc. ("AT&T") [in Florida and for the other BellSouth states], and Competitive Carriers of the South, Inc. ("CompSouth"), and the Individual Members identified in this Settlement Agreement." Settlement Agreement, initial paragraph and footnote 1. The CompSouth "Individual Members" specifically enumerated were "Access Point, Inc.; Birch Communications; Cavalier Telephone; Covad Communications Company; DeltaCom; NuVox Communications, Inc.; tw telecom Inc.[:] and XO Communications, Inc." *Id.*, at footnote 2.

3. Attachments filed with the Settlement Agreement contained specific revisions to the SQM and SEEM plans that those parties (and, notably, other docket participants) had developed. The Settlement Agreement itself contained other terms and conditions that, for example, were designed to have the settlement terms approved throughout the BellSouth region and to limit the rights of the signatory parties from initiating any non-administrative changes in the revised SQM and SEEM plans for four years. *See* Settlement Agreement, Section 1, at pages 2-3.

4. The Commission Staff subsequently issued a notice to all the parties to the docket "soliciting comments on CompSouth's Settlement Agreement with AT&T regarding changes to

AT&T's Wholesale Performance Assessment Plan." See March 25, 2010, Staff Memorandum, Document No. 02118-10, March 25, 2010.

5. On April 26, 2010, FCTA and Saturn Telecommunications Service, Inc. ("STS") filed comments in response to the Commission Staff's March 25, 2010 memorandum. In response to these comments, on May 3, 2010, the Commission Staff issued a further memorandum requesting reply comments to the FCTA and STS comments. See Document 03611-10, May 3, 2010. AT&T and CompSouth separately filed their reply comments on May 10, 2010.

6. Over the summer, the parties continued to work toward revisions to the SQM and SEEM plans that would be satisfactory to everyone. On August 2, 2010, AT&T filed the "Second Revised" SQM and SEEM plans. The cover letter to this filing specifically distinguished between those who were parties to the Settlement Agreement and those who merely agreed with the "Second Revised" SQM and SEEM plans:

The revised attachments reflect the agreement reached with CompSouth and incorporate identified errors and inadvertent omissions as well as provisions of the Settlement Agreement entered into between Saturn Telecommunications Service, Inc. ("STS") and the consensus reached between the Florida Cable Telecommunications Association ("FCTA") and AT&T Florida. The Second Revised Attachments A and B replace the previously filed attachments in their entirety and will be incorporated into the Settlement Agreement between CompSouth and AT&T Florida.

7. On August 5, 2010, the Commission Staff filed its Staff Recommendation with respect to the approval of the Settlement Agreement and the August 2, 2010 Second Revised SQM and SEEM plans. In an abundance of caution and because the language of the Staff Recommendation could be read to imply that FCTA was also a party to the Settlement Agreement, on August 12, 2010, FCTA filed with the Commission Clerk a clarification letter.

As is indicated in that letter, FCTA's consensus with AT&T with respect to the SQM and SEEM plans was not and should not be read as a settlement, let alone as an adoption or execution of the Settlement Agreement by FCTA. The absence of any execution of or concurrence with the Settlement Agreement was especially important because of a second point – by not being a party to any “settlement” the FCTA's consensus regarding the Second Revised SQM and SEEM plans was binding only in Florida. Indeed, the “FCTA has no ability to forge a consensus on behalf of operators in states other than Florida. Therefore, FCTA wishes to clarify for the record that there was no agreement or consensus between FCTA and AT&T that the terms of their consensus should apply in any other states.” Document 06665-10, Letter from David Konuch to Lisa Harvey, Assistant Director, Jerry Hallenstein, Government Analyst, and Pauline Evans, Counsel (August 12, 2010).

8. The Commission's consideration of the August 5, 2010, Staff Recommendation was accomplished as a “move staff” item on August 17, 2010, without any discussion. The PAA Order was promptly issued on August 25, 2010.

9. By reciting in detail the events leading up to the issuance of the PAA Order, FCTA wishes to make it clear that it does not object to the Commission's approval of the Second Revised SQM and SEEM plans. Given the work of all of the parties and the Commission Staff, these revised plans are an improvement over the predecessor plans and they should be fully implemented without any delay. In addition, while FCTA is on record as having opposed both the terms and the effect of the Settlement Agreement when it was revealed FCTA does not now object it with respect to those entities that have voluntarily agreed to be bound by its terms and therefore executed it, i.e., AT&T, CompSouth, CompSouth's indicated members, and any other executing party. The record further establishes that the FCTA did not execute any settlement

agreement with AT&T and that FCTA's "consensus" with respect to the Second Revised SQM and SEEM plans cannot and should not be construed or interpreted as acquiescence in or otherwise an agreement to be bound by the terms of the Settlement Agreement. Thus, given the language in the PAA order, it would be inappropriate to now attempt to bind the FCTA or its members to the settlement's terms, especially in other states. Accordingly, FCTA respectfully requests that the Commission issue a brief, amendatory order clarifying that the terms of the Settlement Agreement do not apply to the FCTA or any of its members. The Amendatory Order would simply state that: although FCTA and its member companies fully supported the terms of the SEEM and SQM plans as jointly filed by FCTA and AT&T, neither FCTA nor any of its member companies are signatories to the separate AT&T-CompSouth bi-lateral, or any other, agreement.

WHEREFORE, FCTA respectfully requests that the Commission issued the requested amendatory order to clarify that the terms and conditions of the Settlement Agreement approved by the Commission does not apply, govern, or control the FCTA or its members.

Respectfully submitted, this 15th day of September, 2010.



David A. Konuch, Esq.
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303
Phone: 850-681-1990
FAX: 681-9676
Email: dkonuch@fcta.com

Senior Counsel, Regulatory Law & Technology
Florida Cable Telecommunications Association, Inc.