

Ruth Nettles

000121A-TP

**From:** Martha Johnson [marthaj@fcta.com]  
**Sent:** Friday, October 30, 2009 3:16 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 000121A - FCTA's Response to AT&T's Motion for Expedited Approval of SEEM Modification  
**Attachments:** FCTA's Response to AT&T's Motion.pdf

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

David A. Konuch  
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**B.** The docket title is: **In Re: Docket No. 000121** – FCTA's Response to AT&T's Motion for Expedited Approval of SEEM Modification

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

**D.** This document has a total of 7 pages.

**E.** Attached is the Florida Cable Telecommunications Association's FCTA's Response to AT&T's Motion for Expedited Approval of SEEM Modification.

Thank you,

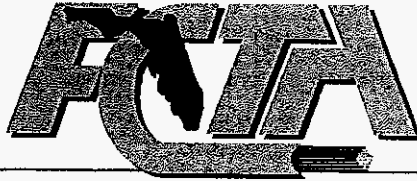
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10/30/2009

DOCUMENT NUMBER-DATE

11017 OCT 30 8

FPSC-COMMISSION CLERK



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Florida Cable Telecommunications Association

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Steve Wilkerson, President

October 30, 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.

Dear Ms. Cole:

Enclosed for electronic filing in the above referenced Docket, please find the Florida Cable Telecommunications Association, Inc.'s Response to AT&T's Motion for Expedited Approval of SEEM Modification.

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,

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Enclosures

DOCUMENT NUMBER - DATE  
11017 OCT 30 08  
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the Establishment of ) Docket No. 000121A  
Operations Support Systems Permanent 2009 ) Filed: October 30, 2009  
Performance Measures for Incumbent Local )  
Exchange Telecommunications Companies )  
(AT&T Florida Track) )

**RESPONSE OF THE FLORIDA CABLE TELECOMMUNICATIONS  
ASSOCIATION TO AT&T's MOTION FOR EXPEDITED APPROVAL OF  
SEEM MODIFICATION**

Florida Cable Telecommunications Association, Inc. hereby submits its comments in opposition to AT&T's Motion for Expedited Approval for Modifications to SEEM Plan, filed October 16, 2009. FCTA respectfully requests that the Commission either summarily deny AT&T's motion, or at a minimum, defer it to the workshop process for consideration.<sup>1</sup>

On October 1, 2009, Staff held a conference call concerning modification of AT&T's SEEM plan, including AT&T's proposal to eliminate Tier II penalties. At that conference call, attended by numerous industry representatives, including FCTA, CompSouth, AT&T, and individual CLECs and cable operators, it was determined that any modifications to the SEEM process would be considered during a series of workshops after the parties first conducted detailed discussions designed to narrow the issues. On October 16, 2009, AT&T filed a petition for expedited relief seeking to eliminate Tier II penalties, with FCTA's response date by order extended until today.

As a procedural matter, AT&T's request for expedited treatment seems calculated to make an end-run around the carefully crafted schedule of workshops designed by the Staff with input of all parties, in favor of a hastily convened proceeding where parties have

<sup>1</sup> FCTA also supports the CompSouth filing made October 23, 2009 in opposition to AT&T's Petition.

extremely limited time to build a record and provide their full input. Staff should either summarily deny AT&T's request, or at a minimum, defer it to the workshop process for consideration.

On the merits, AT&T's arguments do not hold up to even the most casual of scrutiny. For instance, AT&T proposes to fund Lifeline Outreach community service fund ("Outreach fund"), which funds AT&T's lifeline outreach activities for an undefined period, while eliminating *permanently* Tier II penalties, which are in the nature of liquidated damages payable to the state treasury when AT&T misses a metric concerning local competition. To begin with, the Outreach fund and the Tier II penalties serve different, and unrelated, functions. The Tier II penalties provide incentives for AT&T not to unfairly disadvantage competitors in situations where market participants are forced to interact. In contrast, the Outreach fund is an AT&T "corporate undertaking," designed "to educate customers about and promote" AT&T's Lifeline and Linkup service.<sup>3</sup> If outreach is a worthy goal, AT&T should continue to fund it. However, that funding should have no bearing on the continuation of Tier II penalties, which are part of an ongoing system of incentives, designed to ensure AT&T does not unfairly disadvantage competitors with whom they must interact for transferring customers from one network to another, and which resulted from a settlement designed to curb anticompetitive conduct by AT&T.

AT&T proposes to pay \$250,000 for the right not to have to pay \$6 million in future years for violating SEEM competitive safeguard provisions. See CompSouth Opposition to AT&T Expedited Motion, filed October 23, 2009, at 4 (computing future SEEMs payment based on past activities). Extrapolating AT&T's past conduct concerning SEEMs to the

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<sup>3</sup> *In re: Initiation of show cause proceedings against BellSouth Telecommunications Inc. for violations of service standards*, Docket No. 991378-TL, PSC-01-1643-AS-TL (Aug. 13, 1001) at 4.

future, AT&T in essence is asking the Commission to accept less than 5 cents on the dollar for future SEEMs violations (\$250,000 divided by \$6 million). The proposed bargain by AT&T is so one sided in AT&T's favor that it would meet the definition of an unconscionable contract under Florida law. *See e.g. Woebse v. Health Care and Retirement Corp. of America*, 977 So.2d 630, 632 (Fla.App. 2 Dist. 2008) (defining unconscionable contract as "one that no man in his senses and not under delusion would make," or is "outrageously unfair"). As a matter of law, a court would be unlikely to enforce such a bargain if a consumer made it. The Commission similarly should reject AT&T's proposal.

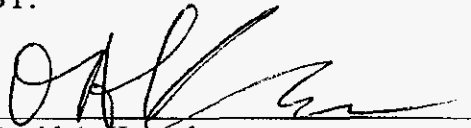
Nor does AT&T explain why an expedited timetable is justified now, considering that all parties, working with the Staff, have agreed on a schedule to address SEEM including Tier II. In addition, AT&T provides no exhibits or other documentation to substantiate its view that the Outreach fund -- which AT&T itself manages, is suffering any financial difficulty. And if the program is sustaining financial difficulty, given that AT&T manages the program itself, AT&T has only itself to blame for any financial shortfall. During the workshop process, Staff should consider whether additional oversight is needed concerning AT&T's management of the Outreach fund.

AT&T seeks to eliminate penalties designed ensure compliance with federal law and market-opening measures, in return for a one-time monetary payment designed to keep its own corporate Outreach program funded for an undefined period. AT&T's proposal should be rejected. Rather, the only criterion the Commission should consider when making changes to the SEEM program is AT&T's performance in working with competitors. That performance at present does not justify any lessening of the SEEM

incentives. AT&T claims its performance has been improving over time if one does not consider what it characterizes as “an anomalous April 2008 software release.” AT&T Motion at 3 n. 5. What AT&T seeks to characterize as an “anomaly” was in fact a catastrophic failure of AT&T’s OSS systems that resulted in outages for tens of thousands of customers and disadvantaged AT&T’s competitors, and which the existing SEEM mechanisms did not provide sufficient incentives to prevent. Accordingly, AT&T’s petition should be denied, and any consideration of its arguments should be deferred to the workshop process.

Respectfully submitted.

BY:



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response of the Florida Cable Telecommunications Association to AT&T's Motion for Expedited Approval of SEEM Modification in Docket 000121A-TP has been served upon the following parties by Electronic Mail this 30th day of October, 2009:

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