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)
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Docket No. 000121A-TP

Filed: February 6, 2009

COMMENTS OF CBEYOND COMMUNICATIONS, LLC, DELTACOM, INC., AND NUVOX COMMUNICATIONS, INC. ON STAFF PROPOSAL

Cbeyond Communications, LLC, Deltacom, Inc., and NuVox Communications, Inc. (Joint CLECs), pursuant to the Notice Seeking Comment, issued by the Commission on January 28, 2009, through undersigned counsel, file their comments on the Staff Proposal resulting from the Audit of AT&T's April 2008 Software Release.

Introduction

1. Joint CLECs are CLECs certified to do business in Florida. Joint CLECs serve business customers in Florida.

2. Joint CLECs use 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 their business operations and their ability to provision, maintain and bill their customers. When AT&T's OSS system is not functioning correctly, as described below, Joint CLECs experience an inferior ability to bring on new customers, manage existing customers, and migrate moving customers -- resulting in lost business, poor service, and, most importantly, discriminatory treatment.

3. In 2000, the Commission opened Docket No. 000121-TP to develop permanent performance metrics for the evaluation of the OSS of the incumbent local exchange carriers.[1] The Commission issued Order No. PSC-01-1819-FOF-TP (*OSS Order*) on September 10, 2001 delineating its findings and performance requirements. The *OSS Order* described the three phases of the docket, with the third phase designated a performance monitoring and evaluation program.[2] This docket has remained open since that time to address issues and concerns arising from OSS performance.

Jurisdiction

4. The Commission recognized in its *OSS Order* that section 364.01(3), Florida Statutes, vests it with regulatory oversight necessary to ensure the development of fair and effective competition in the telecommunications industry.[3] It further recognized that section 364.01(4)(g) requires the Commission to ensure that all providers of telecommunication service are treating fairly by preventing anticompetitive behavior.[4] Such responsibilities remain vested with the Commission and remain critical to the competitors of the incumbents and the consumers of Florida.

April 2008 OSS Release

5. After approval of the BellSouth/AT&T merger,[5] AT&T began to plan to consolidate the OSS systems of the two companies (22-State OSS Release). In April 2008, AT&T began the first step in its plan to consolidate the wholesale operations of BellSouth and AT&T.

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[1] This docket was later broken into three sub-dockets, one for each ILEC. Order No. PSC-02-0503-PCO-TP.
[2] *OSS Order* at 8.
[3] *Id.*
[4] *Id.*
[5] The 13 AT&T states were combined with the 9 BellSouth states.

6. The first phase of this consolidation began with a software release on April 19, 2008 (April Release) as AT&T attempted to switch several legacy BellSouth ordering functions to AT&T's ordering systems in OSS Release 10 and 10.1 in the thirteen-state AT&T region and Release 27.1, Version 27.1 in the nine-state BellSouth region.

7. As a result of inadequate testing, planning and a myriad of other errors, this software release was fatally flawed and AT&T's OSS system failed in critical areas, resulting in Joint CLECs' inability to utilize the necessary functionalities of the system to service current customers and to bring new customers on line.

8. Critical OSS functionality remained inoperable or unavailable after the April Release. Joint CLECs and AT&T tried to implement manual work arounds and used some limited electronic interfaces. These corrective actions took over a week to even begin. Manual processes increased Joint CLECs' costs, degraded the customers' experiences, and invited numerous additional errors, and even loss of CLEC end user customers. Additionally, AT&T call center personnel were not properly trained on the new systems to be able to assist in corrective actions.

9. As a result of the extreme magnitude of the April Release failure and the severe impact on CLEC business operations, on May 12, 2008, Cbeyond and Deltacom filed a Complaint with the Commission.[6] The Complaint[7] sought:

- the commencement of an independent third-party audit of the April Release;
- a stay of any future OSS releases until the completion of the audit and appropriate testing and implementation of the audit recommendations; and
- the issuance of a show cause order to AT&T requiring it to explain in detail the causes of the failure of the April Release.

[6] Time Warner Telecom, LP was also a complainant but subsequently withdrew.
[7] NuVox intervened in this docket and joined in the Complaint on December 22, 2008.

10. After subsequent discussion with Staff and AT&T, Cbeyond and Deltacom agreed that in lieu of the independent audit requested in the Complaint, the Commission Staff would conduct the audit of the April Release, prepare an audit report, and present a recommendation to the Commission regarding the action, if any, which should be taken as a result of the numerous and significant problems stemming from the April Release. This agreement was memorialized in a Stipulation among the parties.

11. The Stipulation was approved in Order No. PSC-08-0618-PAA-TP. This Order describes some of the severe impacts of the April Release failure:

> Specifically, the CLECs reported that they had not received order confirmations, requests for order clarifications, disconnection notices, rejection notices, and communications related to meetings at the customer premises for installations for a period of time following the release. CLEC orders submitted to AT&T during this timeframe were adversely affected by this release.
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> ... AT&T admitted that problems occurred with the April Release. At the meeting, AT&T provided a detailed chronology of events that occurred the first two weeks after the April release. AT&T acknowledged that outgoing transactions, clarifications and rejections were not being delivered to CLECs. AT&T also acknowledged that a backlog of orders in the manual processing center occurred due to outages and instability of the system used by the AT&T representatives in the company's manual processing center. In subsequent Change Control Process meetings, AT&T identified additional issues associated with the release. Most notably over 200,000 billing completion notices and 12,000 completion notices had not been properly delivered to CLECs in the region.
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> . . .
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> AT&T estimated that 71,000 orders in the nine state region were negatively affected by the April Release. Of these orders, AT&T stated that 59,000 were electronic orders, and 11,000 were backlogged manual orders. The CLEC petitioners describe this April Release as the most significant competitively damaging OSS

> failure in the State of Florida since enactment of the Telecommunication Act of 1996. [8]

The Audit

12. Staff conducted the Audit as required by the Commission Order and published its Audit Report in January 2009.[9]

13. The severity and magnitude of the errors in the April Release is documented in detail in the Audit. The Audit concludes that the April Release was a "critical failure."[10] The Audit states:

> Some CLECs describe this April Release as the most significant competitively damaging OSS failure in the State of Florida since the enactment of the Telecommunications Act of 1996. There appeared to be general lack of understanding of the magnitude and complexity of the conversion effort on the part of AT&T management from the beginning. Failures were evident in AT&T's planning, organizing, directing and control of this project.[11]

14. The Audit also finds that there were numerous defect management problems with the April Release:

> Never before had AT&T ever encountered defect management problems such as those resulting from the April Release. The scope of defects encountered overwhelmed its ability to comprehensively respond in a timely manner and resource fatigue eventually became a problem multiplier. The scope, volume and magnitude of **[CONFIDENTIAL]** production defects exceeded AT&T's experience, expectations, and ability to adequately respond. Problems with the defect management process exacerbated the situation.
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> Defect tracking management, from methodology to remediation, was often uncoordinated. Defects were captured in different

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[8] Order No. PSC-08-0618-PAA-TP at 3.
[9] AT&T is seeking to keep large portions of the Audit confidential. Joint CLECs filed an objection to AT&T's request for confidential classification of the Audit on January 22, 2009. Joint CLECs filed an objection to AT&T's request to keep a portion of its comments regarding the Audit confidential on February 3, 2009.
[10] Audit at 2.
[11] *Id.*

applications that did not share common architecture or an ability to communicate. Disparate systems delayed the full comprehension of problems and subsequently hindered management response. Duplicative entries in two systems led to varying but continuing levels of confusion about specific responsibilities. The inability of various defect tracking systems to communicate or cross-populate denied management valuable analysis tools with which to easily and efficiently discern pre-production and production defect trends.

Prioritization of defects was impaired, allocation of resources was impacted and remediation arguably delayed in some instances. Though AT&T stated that defect analysis tools worked as designed in each region, some managers allowed that input errors and user oversights precluded optimum performance. The number of defects resulting from the April Release, particularly those of the most critical severity type, quickly outstripped AT&T's ability to immediately respond in a proactive, comprehensive, and systematic manner. Staff believes the company grossly underestimated the quantity, scope, and severity of defects that might be encountered with this release.[12]

15. In addition, the Audit raises a number of critical issues regarding the Change Management process, which is the way AT&T communicates with the CLECs. The Audit states:

While staff commends AT&T for taking necessary steps to improve communications with CLECs, staff believes that AT&T's Change Management monthly meetings, the principal outlet for communicating with CLECs, could be more effective. Staff further believes that AT&T's commitments do not address possible deficiencies or improvements needed in this Change Management Process, particularly the monthly Change Management calls, now that they have been consolidated under a 22-state umbrella. Lastly, staff believes that AT&T should give more indication or direction to the new Change Management meeting framework to evaluate and address CLEC concerns, including AT&T's 22-state process for escalating CLEC issues raised during the monthly meetings.[13]

16. The Audit concludes that:

Overall, staff is concerned that AT&T has made numerous statements in its April Release key learning resolutions and

[12] *Id.* at 3-4.
[13] *Id.* at 5.

> commitments which promise future compliance with policies or procedures, or improved future performance. With only such statements or promises, Commission staff cannot fully opine as to whether all appropriate and adequate measures have actually been undertaken to prevent CLEC-impacting issues with future releases. Because the Commission cannot fully ascertain AT&T's readiness we are left in a position where we must rely on AT&T attestation of readiness. The decision to move forward with the next 22-state release must by its nature, reside with AT&T. Commission staff believes that the responsibility of readiness rests solely with AT&T management. Because staff cannot truly opine on readiness it believes that AT&T should be held accountable in a material manner for its decision to move forward with the next 22-state release.[14]

17. These excerpts from the Audit make two points abundantly clear. First, there is no question that the April Release was a stunning failure, that it drastically impacted the CLEC community, and that it violated the Commission's OSS requirements as well as the statutes requiring nondiscriminatory treatment. Second, to avoid such a situation as to future software releases, there must be appropriate measures in place prior to any more releases that will ensure that such releases are fully vetted to avoid the devastating impact of the April Release.

18. Staff addresses these issues in its Proposal.

<u>Staff's Proposal</u>

19. As a result of the severe problems encountered with the April Release and the findings in the Audit, the Commission Staff has proposed a mechanism to provide AT&T with the proper incentive to appropriately deal with future 22-state releases. The Staff Proposal is an attempt to ensure that future software releases are appropriately tested and managed so that they do not result in competitive harm to the CLEC community. In describing its Proposal, Staff said:

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[14] *Id.* at 6.

"Staff believes the doubling of SEEM payments serves an *incentive* to ensure that AT&T's future releases are without major defect."[15]

20. Staff's Proposal specifies that:

- The [SEEM] remedies would be calculated using the current process. The monthly remedy amount actually transmitted to CLECs or to the state of Florida would be doubled.

- The doubling shall begin with implementation of the next 22-state release and be for a period of six months.[16]

- The doubling applies to all Tier 1 and Tier 2 SEEM performance measurements.

- The doubling applies to all Florida CLECs eligible to receive Tier 1 remedies.

21. Joint CLECs support the Staff's Proposal as a way to help ensure that future software releases will minimize competitive impact to the CLEC community. As Staff notes, many of the key learnings and commitments AT&T has made are no more than *promises* to "do better next time." There is no quantification of what AT&T is required to do and there is no consequence if AT&T's *promises* are not kept. Such accountability is critical to avoid future software catastrophes.

22. Clearly, more than promises are required to stem future anticompetitive conduct. Until "next time" occurs, CLECs have no assurance that another massive OSS failure – which would critically impact their ability to do business—will not occur. Staff's Proposal provides the proper incentive to AT&T to ensure that future software releases are thoroughly vetted.

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[15] *Notice Seeking Comment*, (Jan. 28, 2009), emphasis supplied.

[16] It is Joint CLECs' understanding that the six-month time frame is intended to cover the next two software releases.

Joint CLEC Additions to Staff Proposal

23. In addition to Staff's Proposal, Joint CLECs propose that the following items also be included:

- CLECs should be provided with complete access to all data underlying the Audit to help them better understand exactly where the flaws and errors in the process occurred. This access will help CLECs better monitor future OSS releases for potential problems and issues.

- The following metrics should be added to Tier 1 to further ensure that AT&T has the proper incentive to manage future software releases:

    - CM-1 Timeliness of Change Management Notices;

    - CM-3 Timeliness of Documentation Associated with Change;

    - CM-6 Percentage of Software Errors Corrected in X Business Days;

    - OSS-2 Add LASR to OSS-2 Interface Availability Metric.

These additions to Staff's Proposal will help ensure that AT&T has the proper incentive on a going-forward basis to make sure that future software releases function properly.

Commission Authority

24. The Commission clearly has the authority to implement Staff's Proposal (along with Joint CLECs' additional suggestions). As noted above, section 364.01(3), Florida Statutes, vests the Commission with regulatory oversight necessary to ensure the development of fair and effective competition in the telecommunications industry. Section 364.01(4)(g) requires the Commission to ensure that all providers of telecommunication service are treating fairly by preventing anticompetitive behavior. These statutory sections are the basis for the original *OSS*

Order,[17] support changes which the Commission has made over time to the SEEM plan, and remain the basis for Commission action in this case.

25. Staff's Proposal is a mechanism to ensure AT&T's future compliance – that is, to provide an incentive to AT&T to properly test and manage future software releases. The Commission and AT&T routinely refer to monies paid under the SEEM plan as penalties with the purpose of ensuring quality OSS. Since these penalties do not represent damages and do not in any way recompense CLECs for the harm and damage they incurred as a result of the April Release failure,[18] it is important that the SEEM plan actually provide the appropriate level of incentive. Joint CLECs believe that Staff's Proposal (along with Joint CLECs' additional suggestions) meets this important requirement.

Show Cause

26. In their Complaint, Joint CLECs requested that the Commission issue a show cause order to AT&T requiring it to explain in detail the causes of the failure of the April Release. In the event that the Commission does not adopt Staff's Proposal, with Joint CLECs' suggested modifications, Joint CLECs request that the Commission proceed with a show cause action.

27. Section 364.285(1), Florida Statutes, provides, in part,:

> The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than $25,000, which penalty

[17] *OSS Order* at 7. *See also,* Order No. PSC-04-0511-PAA-TP.

[18] Section 4.2.1 of the approved SEEM plan states: "The application of the Tier-1 and Tier-2 Enforcement Mechanisms does not foreclose other legal and regulatory claims and remedies available to each CLEC." If SEEM payments were intended to compensate CLECs for damages, this provision would not be included in the plan as it would allow CLECs to collect damages twice. In addition, SEEM payments are not calculated by and do not consider actual damages CLECs experience when OSS operations fail.

> shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it. Each day that such refusal or violation continues constitutes a separate offense.

28. As the Audit, discussed in detail above, demonstrates AT&T's April Release was fatally flawed. It was inadequately tested and released without appropriate safeguards in place. When it became clear that the April Release was making it impossible for CLECs to conduct business, AT&T was inadequately staffed with knowledgeable personnel able to manage the crisis.

29. As the Commission and Staff have recognized, the April Release negatively affected thousands of CLEC orders. Each individual CLEC impacting event, whether it involved the failure to receive order confirmations, requests for order clarifications, disconnection notices, rejection notices, or communications related to meetings at the customer premises for installations, as well as time-consuming manual "work arounds," constitutes a separate event for which the Commission may assess a fine of $25,000 per event.

WHEREFORE, for the reasons stated above, Joint CLECs request that:

1. The Commission adopt Staff's Proposal with the additions provided by Joint CLECs; or, in the alternative,
2. If the Commission does not adopt Staff's Proposal with the Joint CLEC additions, issue a show cause to AT&T requiring it to explain in detail the causes of the failure of the April Release and fining it $25,000 for each CLEC-impacting event resulting from the flawed April Release.

s/ Vicki Gordon Kaufman

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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 6th day of February, 2009 to the following:

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