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July 17, 2009

Hon. Sara Kyle, Chairman  
c/o Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

filed electronically in docket office on 07/17/09

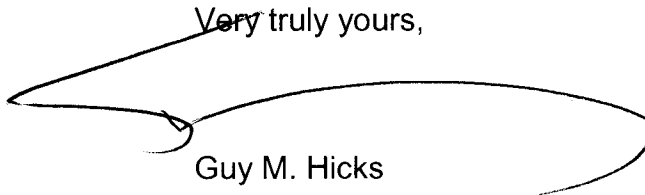
RE: *Petition Requesting Relief from Paying Fines Associated with  
Reposting SQM Performance Data*  
Docket No. 09-00083

Dear Chairman Kyle:

BellSouth Telecommunications, Inc. d/b/a/ AT&T Tennessee is hereby submitting the original plus four paper copies and one electronic copy of the attached Comments. These Comments provide the information the Authority requested during its July 13, 2009 agenda conference.

Thank you for your attention to this matter.

Very truly yours,



Guy M. Hicks

Enclosures

#739366



Official sponsor of the 2012 Olympic Games

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re:        *Petition Requesting Relief from Paying Fines Associated with  
                 Reposting SQM Performance Data*

Docket No. 09-00083

AT&T TENNESSEE'S COMMENTS

BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T") respectfully files its Comments in the above-captioned matter as follows:

1)        On June 11, 2009, AT&T filed its Petition for waiver of the \$400 per day reposting penalties stemming from an error in coding in accordance with Section 2.6 of AT&T's Self-Effectuating Enforcement Mechanisms (SEEM) Plan. AT&T noted that, absent the relief sought by the Petition, AT&T would pay a fine of approximately \$35,200 in Tennessee and approximately \$316,800 in its nine state Southeast region. These fines would far exceed the significance of the administrative error, as AT&T has timely paid all remedies to the CLECs.

2)        On June 13, 2009, the Authority ordered AT&T to file comments by July 17, 2009. Specifically, the TRA ordered AT&T to submit a filing setting forth the fines it has paid as a result of incorrect posting of SQM data since 2003, together with an explanation of how such paid fines differ from the one that is the subject of this docket.

3)        Since 2003, AT&T has paid the following fines resulting from the posting of SQM data in Tennessee:

<u>DATA MONTH</u>	<u>PREVIOUS RE- POSTING FINES AMOUNT</u>
March, 2003	\$ 5,600
April, 2003	\$ 1,200
August, 2003	\$ 800
October, 2004	\$25,600
November, 2004	\$13,200
December, 2004	\$11,600
May, 2005	\$14,400
April, 2008	\$36,400
May, 2008	\$24,400
June, 2008	\$12,000

4) The instant situation is a unique and first- time occurrence. As the Authority is aware, the purpose of the reposting obligation is to encourage AT&T to correctly report data relied upon to calculate SEEM remedy payments. Unlike all previous reposting of SQM performance reports that required recalculation of SEEM remedies to the Competitive Local Exchange Carriers (CLECs) and the TRA, the reposting that is the subject of this Petition for Relief had no such impact, because performance data for remedy calculations was properly processed and resulted in on-time and accurate remedy

payments. SEEM remedy obligations and SEEM liability calculations were reflective of actual operational performance.

5) In this docket some of the transactions (and only for some Local Number Portability (LNP) transactions) were reported in the Resale disaggregation when they should have been reported in the UNE disaggregation. Had the Service Order Accuracy report been based on total performance instead of split between Resale and UNE, the results would not have changed. Therefore, the CLECs had complete information to understand and assess their performance, and this error in SQM performance reporting did not by any means impair the CLECs' ability to compete.

6) Moreover, AT&T has acted in good faith by identifying and self-reporting this error in the SQM performance reports for Service Order Accuracy and promptly initiated corrective action, including notification to the industry as required by Appendix F (PMAP Data Notification Process) of the SQM Plan. Under these circumstances, AT&T contends that payment of the \$400 per day reposting fine serves as a disincentive for AT&T to be proactive in the spirit of continuous improvement to identify any potential data processing errors.

7) AT&T Tennessee also wishes to notify the Authority that on July 14, 2009 the North Carolina Utilities Commission granted AT&T North Carolina's request for waiver of the same reposting fine that is the subject of the Authority's docket. Copies of the Commission's Order granting AT&T's Petition for Waiver are attached.

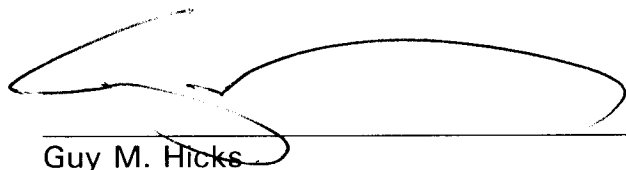
8) In summary, AT&T had a very reasonable basis for seeking relief from the reposting fine that is the subject of this docket while not seeking similar relief regarding the previous reposting fines. The reposting that is the subject of this docket is

unique in that it had no impact on the SEEM payments made to CLECs and the Tier 2 payments made to public service commissions, including the TRA. The same cannot be said for the fines relating to previous repostings, so AT&T did not seek to be relieved of those fines.

For all of the reasons set forth in its June 9 Petition and herein, AT&T respectfully requests that the Authority grant its waiver request.

Respectfully submitted, this 17<sup>th</sup> day of July 2009.

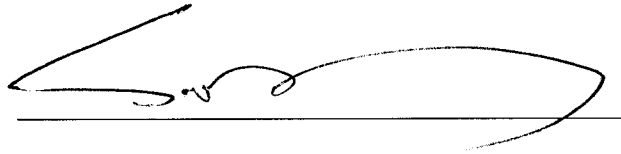
BELLSOUTH TELECOMMUNICATIONS, INC.  
dba AT&T TENNESSEE

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line.

Guy M. Hicks  
Joelle Phillips  
333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300  
615) 214-6301

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the TRA Staff by electronic mail this 17<sup>th</sup> day of July, 2009.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

#739261

DOCKET NO. P-100, SUB 133k

In the Matter of  
Generic Docket to Address Performance  
Measurements and Enforcement Mechanisms

) ORDER GRANTING AT&T'S  
) PETITION FOR WAIVER

AT&T noted that, absent the relief it is seeking in its Petition, the reposting of the corrected data would result in AT&T paying a fine of approximately \$35,200 in North Carolina. AT&T asserted that, under the circumstances (which include no harm to competing local providers (CLPs) and self-reporting by AT&T), a fine of this magnitude is unduly punitive, excessive, and inconsistent with the purposes of the reposting obligation. AT&T further noted that all SEEM remedy obligations and SEEM liability calculations were correctly processed at all times, and all CLPs have received the appropriate payments under the SEEM Plan.

By Order dated June 11, 2009, the Commission requested interested parties to file comments on AT&T's Petition. In its Order, the Commission requested AT&T, in its reply comments, to provide additional clarification on why the reposting situation is different from other reposting situations in the past. The Commission noted that, specifically, AT&T paid significant reposting fees several times in 2008 according to the Service Quality Measurement (SQM)/SEEM Posting Report found on the PMAP website. The Commission stated that AT&T should clarify what made those paid reposting penalties different from the reposting penalties considered in AT&T's instant Petition. The Commission maintained that it appears from AT&T's Petition that the 2008 repostings may have required additional SEEM payments to CLPs while the current situation did not impact SEEM payments to CLPs in any way.

On June 22, 2009, the Public Staff filed its comments on AT&T's Petition. The Public Staff noted that the initial SEEM plan was adopted by the Commission in its

<sup>1</sup> Section 2.6 of AT&T's SEEM Plan states, "BellSouth shall pay penalties to the Commission, in the aggregate, for all reposted SQM and SEEM reports in the amount of \$400 per day. The circumstances which may necessitate a reposting of SQM reports are detailed in Appendix F, Reposting of Performance Data and Recalculation of SEEM Payments. Such payments shall be made to the Commission or its designee within fifteen (15) calendar days of the final publication date of the report or the report revision date."

May 22, 2002, *Order Concerning Performance Measurements and Enforcement Mechanisms*. The Public Staff stated that, in that *Order*, the Commission found that a penalty is an appropriate incentive to encourage AT&T to provide complete and accurate reports that allow the Commission and CLPs to monitor the level of service provided by AT&T. The Public Staff noted that the penalties adopted in that plan were \$1,000 per day for incorrect SQM, SEEM or raw data reports, up to \$3,000 per day, irrespective of their effect on other SEEM payments. The Public Staff maintained that on October 24, 2005, the Commission approved revised SEEM and SQM plans proposed by a coalition of CLPs and AT&T. The Public Staff stated that the revised SEEM plan, among other things, reduced AT&T's penalty obligations to \$400 per day for all reposted SQM and SEEM reports.

The Public Staff further noted that the policy under which AT&T is required to repost SQM data is set forth in Appendix D of the SQM plan and Appendix F of the SEEM plan. The Public Staff stated that the reposting policy sets the threshold at which AT&T must post corrected reports. The Public Staff asserted that this prevents AT&T from being required to repost data and incur penalties due to insignificant changes in the reporting results. The Public Staff maintained that, in this case, the posting error met the threshold described in the policy, thereby triggering the reposting requirement.

The Public Staff asserted that AT&T has failed to show that the penalty amount is unduly punitive or excessive or inconsistent with the purpose of the reposting obligation. The Public Staff noted that, indeed, AT&T paid similar penalties in 2008 for reposting SQM data as prescribed by the SEEM plan. The Public Staff maintained that the penalty payment due in this instance should give AT&T sufficient incentive to report accurate SQM data. Therefore, the Public Staff recommended that the Commission deny AT&T's request for a waiver.

On July 1, 2009, AT&T filed its reply comments. AT&T argued that the instant situation is a unique and first-time occurrence. AT&T maintained that the purpose of the reposting obligation is to encourage AT&T to correctly report data relied upon to calculate SEEM remedy payments. AT&T noted that, unlike previous reposting incidences of SQM performance reports that required recalculation of SEEM remedies to the CLPs and the Commission, the instant reposting had no such impact, because performance data for remedy calculations was properly processed and resulted in on-time and accurate remedy payments. AT&T asserted that, in other words, SEEM remedy obligations and SEEM liability calculations were reflective of actual operational performance; CLPs experienced no harm from this data reporting issue.

AT&T noted that, for purposes of the SQM performance reports for the P-11 Service Order Accuracy measurement, all Local Service Requests (LSRs) submitted by CLPs for which the P-11 metric applies were reviewed for accuracy to the completed service order after provisioning. AT&T stated that the metric report has two levels of disaggregation: Resale and UNE. AT&T maintained that the issue here is that some of the transactions (and only for some Local Number Portability (LNP) transactions) were reported in the Resale disaggregation when they should have been reported in the UNE



disaggregation. AT&T asserted that, had the Service Order Accuracy report been based on total performance instead of split between Resale and UNE, the results would not have changed. AT&T argued that, therefore, the CLPs had complete information to understand and assess their performance, and this error in SQM performance reporting did not by any means impair the CLPs' ability to compete.

AT&T stated that the requirement for the reposting was triggered by item 3 set forth in Appendix D of the SQM Plan<sup>2</sup> and Appendix F of the SEEM Plan<sup>3</sup>. AT&T noted that, specifically, for SQM sub-metrics calculations with benchmarks, reposting is required whenever there is a  $\geq 2\%$  decline in AT&T's performance at the sub-metric level. AT&T maintained that a recently-completed data analysis, which AT&T attached to its reply comments as Exhibit A, for the three performance data months subject to the reposting fine (December, January, and February), plus the additional data month of March, reflects that only a slight difference between the resale results for two months (December: 2.15%; January: 2.29%) triggered the reposting obligation. AT&T noted that for both the months of February and March, the difference was less than 2% and, therefore, no reposting was necessary. AT&T argued that this slight difference should not trigger a fine in a situation where remedies were accurately and timely processed.

AT&T maintained that the three performance data months subject to the reposting fine are December, January, and February. AT&T noted that the respective SEEM remedy payments for these data months were processed in February, March, and April. AT&T stated that it paid the Commission Tier 2 remedies totaling \$37,200 for those performance months for the Service Order Accuracy metric. AT&T argued that it is unduly punitive to now require a reposting fine of \$35,200, which almost equals the Tier 2 remedies paid that were processed in a timely manner using correct performance data.

AT&T asserted that it has acted in good faith by identifying and self-reporting this error in the SQM performance reports for Service Order Accuracy and promptly initiating corrective action, including notification to the industry as required by Appendix F (PMAP Data Notification Process) of the SQM Plan. AT&T maintained that, under these circumstances, the payment of the \$400 per day reposting fine serves as a disincentive for AT&T to be proactive in the spirit of continuous improvement to identify any potential data processing errors.

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<sup>2</sup> Item 3 in Appendix D of AT&T's SQM Plan states, "SQM Performance sub-metric calculations with benchmarks where statewide aggregate performance is in an "out of parity" condition will be available for reposting whenever there is a  $\geq 2\%$  decline in BellSouth's performance at the sub-metric level."

<sup>3</sup> Item 3 in Appendix F of AT&T's SEEM Plan states, "SQM Performance sub-metric calculations with benchmarks where statewide aggregate performance is in an "out of parity" condition will be available for reposting whenever there is a  $\geq 2\%$  decline in BellSouth's performance at the sub-metric level."

AT&T stated that, for all of the reasons set forth in its Petition and reply comments, the Commission should grant its waiver request.

WHEREUPON, the Commission now reaches the following

### CONCLUSIONS

The Commission concludes and determines that the SQM and SEEM plans in place for AT&T are reasonable and appropriate. Those plans call for AT&T to pay a reposting penalty to the Commission of \$35,200 for data errors made in December 2008 and January 2009. Reposting is required whenever there is a  $\geq 2\%$  decline in AT&T's performance at the sub-metric level. Based on Exhibit A attached to AT&T's reply comments, the difference between the original metric result and the reposted metric result for P-11 Service Order Accuracy – Resale for December 2008 was -2.15% or 0.15% higher than the 2% threshold, and the difference between the original metric result and the reposted metric result for P-11 Service Order Accuracy – Resale for January 2009 was -2.29% or 0.29% higher than the 2% threshold.

The Commission concludes and determines that, in this unique and specific circumstance, it is appropriate to grant AT&T's request for a waiver of the reposting penalty. Because the percentages which triggered the reposting and reposting penalty are so close to the 2% threshold and because all SEEM penalty payments were calculated correctly and paid on-time, the Commission is satisfied that this specific instant case is deserving of a waiver. The Commission stresses that this is a decision based on the facts of AT&T's instant request and that the Commission is granting a waiver to a reposting penalty that is technically and legitimately due under AT&T's SEEM plan. The Commission does not intend for this decision to be precedent-setting and will consider any future waiver petitions of this nature on a case-by-case basis.

IT IS, THEREFORE, ORDERED that AT&T's June 9, 2009 Petition for Waiver is hereby granted.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of July, 2009.

NORTH CAROLINA UTILITIES COMMISSION



Patricia Swenson, Deputy Clerk