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August 17, 2009

VIA HAND DELIVERY

filed electronically in docket office on 08/17/09

Hon. Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

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

Dear Chairman Kyle:

Enclosed please find *AT&T Tennessee's Reply Comments* in the referenced matter. A copy has been provided to counsel of record.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop that starts under the word "yours" and extends to the right, then loops back down and left to end under the name "Guy M. Hicks".

Guy M. Hicks

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

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

Docket No. 09-00083

**AT&T TENNESSEE'S REPLY COMMENTS**

BellSouth Telecommunications, Inc. dba AT&T Tennessee ("AT&T")  
respectfully files its *Reply Comments* in this docket as follows:

**Summary**

The Authority should grant AT&T's Petition for Waiver based on the unique and specific facts presented, consistent with recent orders entered by the North Carolina Utility Commission and the Public Service Commission of South Carolina.

**Background**

(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 9-state Southeast Region. AT&T noted that these fines far exceed the significance of the administrative coding error and that AT&T had timely paid all remedies to the Competing Local Exchange Providers (CLECs).

(2) On June 13, 2009, the Tennessee Regulatory Authority (“Authority”) ordered AT&T to file comments by July 17, 2009. Specifically, the Authority ordered AT&T to submit a filing setting forth the fines it has paid as a result of incorrect posting of Service Quality Measurement (“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) On July 17, 2009, AT&T provided the information requested by the Authority, explaining that AT&T had a very reasonable basis for seeking relief from the reposting fine that is the subject of this docket, even though it has not sought similar relief in connection with previous reposting fines. The reposting that is the subject of this docket is *unique* in comparison to prior reposting events in that it had *no impact* on the SEEM remedy payments made to the CLECs or the Tier 2 remedy payments made to public service commissions, including the Authority. The same cannot be said for the fines relating to previous repostings, where AT&T did not seek to be relieved of those reposting fines.

(4) AT&T also notified the Authority that on June 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. A copy of the Commission’s Order granting AT&T’s petition for waiver was provided to the Authority on July 17, 2009.

(5) On August 5, 2009, the Public Service Commission of South Carolina entered its Order granting AT&T South Carolina's petition for waiver of fine. A copy of the Commission's Order is attached.

(6) On August 5, 2009, CompSouth submitted comments opposing AT&T Tennessee's petition for waiver.<sup>1</sup>

#### Discussion

(7) There is no question that the Tennessee SEEM Plan authorizes the Authority to grant AT&T relief.<sup>2</sup> CompSouth does not argue otherwise. Both the North Carolina and South Carolina commissions recently recognized that the SEEM Plan authorizes them to waive the re-posting fines.<sup>3</sup> Nor does CompSouth dispute that its member CLECs received every dollar due them under the Tennessee SEEM Plan.<sup>4</sup>

(8) Given CompSouth's acknowledgement that (1) the terms of the SEEM Plan allow the Authority to waive the reposting fine and (2) the CLECs were not harmed by the reposting error, CompSouth can only claim that the reposting fine should be imposed so the CLECs can monitor AT&T's wholesale performance.<sup>5</sup> CompSouth also argues that all SEEM

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<sup>1</sup> Neither CompSouth nor any individual CLECs filed motions to intervene in North Carolina or South Carolina.

<sup>2</sup> See Section 4.5.3 of the SEEM Plan, which expressly allows AT&T to "petition the [TRA] to consider relief based upon other circumstances." A separate provision of the SEEM Plan, Section 4.5.2, requires the Authority to waive fines resulting from *force majeure* events.

<sup>3</sup> See State of North Carolina Utility Commission *Order Granting AT&T's Petition for Waiver* in Docket No. P-100, SUB 133k, at p. 4. See also the Public Service Commission of South Carolina's *Order Granting Petition for Waiver of Fine* in Docket No. 2001-209-C, Order No. 2009-519, at p. 2.

<sup>4</sup> See p. 5 of the *Comments* of CompSouth. "Therefore, the fact that AT&T's errors did not affect payments to CLECs ...".

<sup>5</sup> *Id.*

Plan penalties were “agreed to” by AT&T and therefore should never be waived. These arguments miss the mark. The purpose of the reposting obligation is to encourage AT&T to correctly report data relied upon to calculate SEEM remedy payments. Also, as explained in detail below, the coding error that triggered the reposting was very minor, and the CLECs were provided complete information to understand and assess AT&T’s performance. Finally, if reposting fines are never to be waived under any circumstances, as CompSouth’s argument implies, the authorization in Section 4.5.3 of the Authority-approved SEEM Plan to waive fines would be meaningless. The Authority should not adopt a construction of the SEEM Plan waiver provision that would render it meaningless.

CompSouth cannot have it both ways, acknowledging that the SEEM Plan allows the Authority to waive reposting fines, while at the same time relying on an argument that implies such fines should never be waived.

(9) CompSouth’s reliance in its Comments on language from a 2001 Authority Order regarding Tier 2 SEEM remedy payments to the State is also misplaced. First, the reposting fine at issue is not a Tier 2 SEEM remedy payment. In fact, AT&T paid the Authority Tier 2 remedies totaling \$12,000 for the measure addressed in the reposting. Second, the language CompSouth relies upon actually undermines CompSouth’s argument. Language quoted by CompSouth includes the following:

Tier 2 enforcement mechanisms represent a designated payment to the state resulting from BellSouth’s *systemic*

failure to provide adequate service to the CLEC community. (emphasis added)<sup>6</sup>

(10) CompSouth cannot seriously contend that the very minor coding error that is the subject of this docket represents a “systemic failure to provide adequate service” to the CLECs.

(11) Finally, CompSouth asserts that AT&T’s Petition for Waiver is a “prequel” to a broader request for relief for AT&T and that granting the relief would create a precedent. This assertion is easily addressed. The Authority may state in an order granting relief that the order is limited to the facts and circumstances presented and does not create any precedent with respect to any future waiver requests. This is precisely what the North Carolina utilities Commission did recently in its *Order Granting AT&T’s Petition for Waiver*. The North Carolina Commission held:

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.* (emphasis added)

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<sup>6</sup> See Authority *Final Order* in Docket 01-00193, at p. 29.

(12) With all due respect to CompSouth, 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 previous reposting incidences of SQM performance reports that required recalculation of SEEM remedies to the CLECs and the Authority, this reposting had no such impact, because performance data for remedy calculations was properly processed and resulted in on-time and accurate remedy payments. In other words, SEEM remedy obligations and SEEM liability calculations were reflective of actual operational performance. Accordingly, CLECs experienced no harm from this data reporting issue.

(13) For purposes of the SQM performance reports for the P-11 Service Order Accuracy measurement, all Local Service Requests (LSR) submitted by CLECs, for which the P-11 metric applies, were reviewed for accuracy to the completed service order after provisioning. The metric report has two levels of disaggregation: Resale and UNE. 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. 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.

(13) The requirement for the reposting was triggered by item 3 set forth in Appendix D of the SQM Plan and Appendix F of the SEEM Plan. 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. Only a slight difference between the resale results for two months (December: 2.15%; January: 2.29%) triggered the reposting obligation. For both the months of February and March, the difference was less than 2% and, therefore, no reposting was necessary. AT&T submits that this slight difference should not trigger a fine in a situation where remedies were accurately and timely processed.

(14) As stated above, the three performance data months subject to the reposting fine are December, January and February. The respective SEEM remedy payments for these data months were processed in February, March and April. AT&T paid the Authority Tier 2 remedies totaling \$12,000 for those performance months for the Service Order Accuracy metric. It is unduly punitive to now require an additional fine of \$35,200, which is almost three times the Tier 2 remedies paid that were processed in a timely manner using correct performance data.

(15) 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 initiating corrective action, including notification to



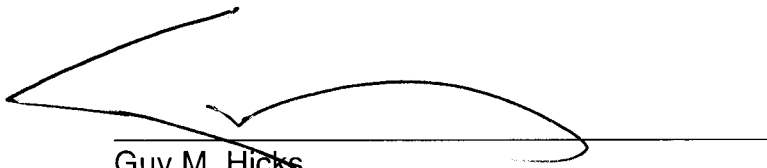
the industry consistent with Appendix F (PMAP Data Notification Process) of the SQM Plan. Under these circumstances, AT&T contends that payment of the \$400 per day reposting fine serves as a disincentive for AT&T to be proactive in the spirit of continuous improvement to identify any potential data processing errors.

Conclusion

AT&T respectfully requests that the Authority grant this *Petition for Waiver* based on the unique and specific facts of this Petition.

Respectfully submitted,

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. The signature is stylized with a large, sweeping loop.

Guy M. Hicks  
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BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2001-209-C - ORDER NO. 2009-519

AUGUST 5, 2009

IN RE:	Application of BellSouth Telecommunications, Incorporated d/b/a AT&T South Carolina to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996	)	ORDER GRANTING PETITION FOR WAIVER OF FINE
		)	
		)	

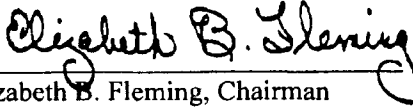
This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition of BellSouth Telecommunications, Incorporated d/b/a AT&T South Carolina ("AT&T" or "the Company") for waiver of a Self-Effectuating Enforcement Mechanisms ("SEEM") Plan fine. The Company recently discovered a mistake in certain performance data that has been posted as required by the Service Quality Measurement ("SQM") plan established in this Docket. Specifically, an error in the coding that is used to post information caused certain activity for the Service Order Accuracy ("SOA") measurement to be posted under Resale results when it should have been posted under UNE results. The coding used to post SQM performance results is different from the coding used to calculate SEEM remedies, and the coding used to calculate SEEM remedies was correct at all times. Accordingly, despite the posting errors, all SEEM remedy obligations and SEEM liability calculations were correctly processed at all times, and all competitive local exchange carriers ("CLECs") have received the appropriate payments under the SEEM plan.

The SQM Plan, however, requires AT&T to repost the corrected data. Absent the relief AT&T is seeking in its Petition, this reporting would result in AT&T paying a fine of approximately \$35,200 in South Carolina (and in AT&T paying fines of approximately \$316,800 in its nine-state Southeast region). AT&T asserts that under the present circumstances, which include no harm to the CLECs and self-reporting by AT&T, a fine of this magnitude is punitive, excessive, and inconsistent with the purposes of the reposting obligation. The SEEM Plan allows AT&T to “petition the Commission to consider relief based upon other circumstances.” AT&T therefore requests that this Commission enter an Order relieving it of any obligation to pay the aforementioned reposting fine. We would note that no entity has filed any document opposing the AT&T Petition.

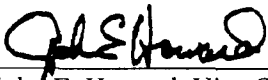
We have examined this matter, and we hereby grant the Petition. The coding error did not affect the penalty payments owed to the competitive carriers. We agree that the size of the fine does seem excessive under these circumstances, and considering the specific facts of this case, granting the Petition for Waiver of the fine is not inconsistent with the underlying purposes of the SEEM Plan. However, we also hold that this decision should not be considered precedent for a change in the method of assessment of penalty calculations going forward. We believe this to be a unique circumstance. Future waiver petitions shall be considered on a case-by-case basis.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

  
Elizabeth B. Fleming, Chairman

ATTEST:


  
John E. Howard, Vice Chairman  
(SEAL)

## CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2009, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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A handwritten signature in black ink, appearing to be 'H. Walker', is written over a horizontal line.