



Suite 1200
106 East College Avenue
Tallahassee, FL 32301

www.akerman.com

850 224 9634 tel 850 222 0103 fax

Dallas
Denver
Fort Lauderdale
Jacksonville
Los Angeles
Madison
Miami
New York
Orlando
Tallahassee
Tampa
Tysons Corner
Washington, DC
West Palm Beach

March 22, 2010

RECEIVED-FPSC
10 MAR 22 PM 3:56
COMMISSION
CLERK

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket 000121A -- Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (AT&T FLORIDA TRACK)

Dear Ms. Cole:

Please find attached for filing the Settlement Agreement, including the Revised SQM and SEEM Plans attached thereto (the "Settlement"), between the Competitive Carriers of the South, Inc., ("CompSouth"), the identified CompSouth member carriers and BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T").

The parties to the Settlement maintain that the Settlement reflects a reasonable compromise of all issues currently pending in this docket. Further, the Settlement honors every agreement reached during the course of the staff-held workshops to date; none of those agreements have been altered or undone by the Settlement.

The parties to the Settlement respectfully request that the Commission approve the Settlement as a reasonable resolution to this matter. We look forward to the input of the staff and other interested carriers.

COM _____
APA 5 _____
ECR _____
GCL 2 _____
RAD _____
SSC _____
ADM _____
OPC _____
CLK _____

DOCUMENT NUMBER - DATE

02046 MAR 22 0

FPSC-COMMISSION CLERK

Ms. Ann Cole
March 22, 2009
Page 2

Your assistance is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Feil". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Feil

Attachments

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made and entered by and between BellSouth Telecommunications, Inc.¹ ("AT&T"), and Competitive Carriers of the South, Inc. ("CompSouth"), and the Individual Members² identified in this Settlement Agreement. AT&T, CompSouth, and the Individual Members are referred to herein collectively as "Parties" and individually as a "Party."

WHEREAS, the Parties are currently in the review process of AT&T's Service Quality Measurement ("SQM") and Self Effectuating Enforcement Mechanism ("SEEM") plans pursuant to Florida Public Service Commission Docket Number 000121A-TP; and

WHEREAS, the Parties have made significant progress in negotiating mutually beneficial modifications to the SQM and SEEM plans that the Parties would like to extend to each of the nine states formerly comprising the BellSouth states; and

WHEREAS, AT&T desires the abolishment of both Tier II and non-service impacting penalties³ associated with the SEEM plan in each of the nine states formerly comprising the BellSouth states; and

WHEREAS, CompSouth seeks assurances that AT&T's wholesale service quality in a state will not degrade if the state regulatory authority decides to abolish Tier II penalties associated with the SEEM plan; and

WHEREAS, the Parties desire to create certainty for a specific period of time as it relates to the SQM and SEEM plans in each of the nine states formerly comprising the BellSouth states;

NOW, THEREFORE, in consideration of the mutual promises, agreements, and covenants contained herein, the sufficiency of which is acknowledged by the Parties, AT&T and CompSouth agree as follows:

¹ For purposes of the Settlement Agreement, BellSouth Telecommunications, Inc. means the following entities: BellSouth Telecommunications, Inc. d/b/a AT&T Alabama; BellSouth Telecommunications, Inc. d/b/a AT&T Florida; BellSouth Telecommunications, Inc. d/b/a AT&T Georgia; BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky; BellSouth Telecommunications, Inc. d/b/a AT&T Louisiana; BellSouth Telecommunications, Inc. d/b/a AT&T Mississippi; BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina; BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina; BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee.

² For purposes of this Settlement Agreement, Individual Members are: Access Point, Inc.; Birch Communications; Cavalier Telephone; Covad Communications Company; DeltaCom; NuVox Communications, Inc.; tw telecom, Inc. and XO Communications, Inc.

³ Non-service impacting penalties specifically refer to the following: (a) the automatic penalty of \$2,000-per-day for the late posting of SQM reports (SEEM Section 2.5); (b) the \$400-per-day penalty for reposting SQM reports (SEEM Section 2.6); and, (c) the \$1,000-per-day penalty for each day after the due date for payments made to the Commission (SEEM Section 4.4.3).

DOCUMENT NUMBER DATE

02046 MAR 22 9

FPSC-COMMISSION CLERK

I. Specific Terms

- (A) Subject to approval of the state regulatory authority for each state as provided in paragraph (F) below, the terms of the Settlement Agreement apply to each of the nine states formerly comprising the BellSouth states, to wit: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.
- (B) Subject to approval of the state regulatory authority for each state as provided in paragraph (F) below, the Parties have agreed to certain modifications of the SQM and SEEM plans. The SQM and SEEM plans, as modified, are attached hereto as Attachments "A" and "B" respectively (hereinafter "Revised SQM and SEEM Plans"). The Revised SQM and SEEM Plans are incorporated herein by reference and are integral parts of this Settlement Agreement. The Parties will seek approval of the Revised SQM and SEEM Plans and this Settlement Agreement in each of the nine states formerly comprising the BellSouth states. The first request for approval will be made by AT&T at the Florida Public Service Commission. Once approval is received in Florida, AT&T will file the Revised SQM and SEEM Plans and this Settlement Agreement in the remaining eight (8) states in a sequence the Parties will discuss and agree to in advance. Oversight of and enforcement authority for the Revised SQM and SEEM Plans will remain with the state regulatory authority in each state.
- (C) AT&T has the burden of obtaining approvals (consistent with paragraph (F) below) for the Revised SQM and SEEM Plans and this Settlement Agreement from the impacted state public utility commissions. CompSouth has no obligation to support approvals, but will not oppose the obtaining of the approvals. In the event AT&T is not successful in obtaining an approval in a specific state, then this Settlement Agreement and attached Revised SQM and SEEM Plans become unilaterally voidable by a Party for that specific state, provided written notice of exercise of that right is given to the other Parties within thirty (30) days of issuance of a final, non-appealable order denying the approval. If any Party exercises its unilateral option to void this Settlement Agreement and attached Revised SQM and SEEM Plans for a state pursuant to this paragraph, then a Party may seek a review of the existing SQM and SEEM plan for that specific state.
- (D) The Settlement Agreement, whether approved or pending approval, will not preclude a Party from participating in state public utility commission investigations involving SQM and/or SEEM plans during the Settlement Term in paragraph (E) below. Each Party may provide information on its positions on the issues presented in such proceedings. However, as participants in such proceedings, if the Settlement Agreement has been approved or is pending in the investigating state, the Parties will refer to the Settlement Agreement as a reasonable resolution of any investigated issues within the scope the Settlement Agreement. In the event a state public utilities commission attempts, during the term of this Settlement Agreement, to make non-administrative modifications to

the terms of the attached Revised SQM and SEEM Plans, or attempts to reinstate Tier II penalties associated with the Revised SEEM Plan, then a Party can raise any legal or equitable defenses to such an action.

- (E) The term of this Settlement Agreement is for a period of four (4) years from the date of Commission approval (as described in subparagraph (F) below). During the term of the Settlement Agreement (“Settlement Term”), the Parties will not seek any non-administrative changes in the attached Revised SQM and SEEM Plans and will not seek any changes to or challenge the state regulatory authority's jurisdiction, to the extent the state regulatory authority has such jurisdiction, to adopt or to enforce the Revised SQM and SEEM Plans. The restrictions of this paragraph prohibit any such change or challenge sought by either Party before any agency, court or legislature of any of the states referenced in paragraph (A) above and any agency, court or Congress of the United States. At the conclusion of the Settlement Term, the Parties may seek whatever changes to the SQM and SEEM Plans as they deem appropriate.
- (F) The Settlement Agreement and attached Revised SQM and SEEM Plans are not effective in a specific state, and no Party has any obligation thereunder, until approved by the applicable state regulatory authority in a final, non-appealable order without any modification to terms objectionable to a Party, in the Party's sole discretion; provided, however, that a Party may not declare as objectionable modification of a state's decision to retain or change all or some of the non-service impacting penalties (as defined in footnote 3 above) or to make changes which are administrative or clarifying in nature. Until the Settlement Agreement and attached Revised SQM and SEEM Plans become effective as provided in this paragraph, the Parties agree to abide by existing commission-approved SQM and SEEM plans. Commencing with the first full data month after the Revised SQM and SEEM plans become effective in a state, the failure month count for the Tier-1 Fee Schedule will be reset to month one (1) for all remedied metrics.
- (G) Except upon a CompSouth or Individual Member showing of material error in implementation of the Revised SQM or SEEM Plans in a state, CompSouth and each Individual Member agrees not to initiate a formal audit of the Revised SQM or SEEM Plans for eighteen (18) months after the start of the Settlement Term. This paragraph shall not affect the ability of a state regulatory authority to audit as it deems necessary and justified.

II. No Admission of Liability

It is understood and agreed between the Parties that this Settlement Agreement is a compromise of disputed matters of fact and law, and any recital, payment, credit or refund is not to be construed as an admission of liability on the part of either of the Parties, by whom any alleged liability is expressly denied.

III. Attorney's Fees and Costs

The Parties agree to bear their own attorney's fees and costs.

IV. Warrant of Capacity to Execute Agreement

The Parties represent and warrant that each has the sole right and exclusive authority to execute this Settlement Agreement, to agree to the terms and condition set forth herein and that neither of the Parties has disposed of any of the claims, demands, obligations or causes of action described in this Settlement Agreement. The Parties also warrant that each has acquired the necessary authorizations to execute and be bound by this Settlement Agreement.

V. Governing Law

The Settlement Agreement including all matters of construction, validity and performance shall be governed by, and construed in accordance with, the laws of the state wherein the Settlement Agreement and Revised SQM and SEEM Plans were approved by the state public utilities commission.

VI. Additional Documents

The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

VII. Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

VIII. Advice of Counsel and Reading of Agreement

The Parties acknowledge, represent and warrant that each has been fully advised by its attorney(s) concerning the execution of this Settlement Agreement, that each has fully read and understands the terms of this Settlement Agreement, and that each has freely and voluntarily executed this Settlement Agreement. The Parties acknowledge, represent and warrant that each relies wholly upon its understanding of this Settlement Agreement, that each has been represented by counsel in connection herewith, and that it enters into this Settlement Agreement of its own free will without reliance upon any statement, inducement, promise or representation of the other Party or anyone else not fully expressed herein.

IX. Entire Agreement

This Settlement Agreement reflects the entire agreement and understanding between the Parties with respect to the settlement contemplated herein, supersedes all prior

X. Binding on Successors/Assigns.

Upon the date of execution hereof, this Settlement Agreement shall be binding on both Parties, and their respective successors and assigns.

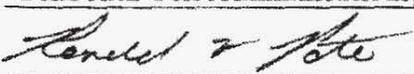
XI. Headings.

The Preamble and Section headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement. However, the contents of the Preamble are considered part of the binding obligations of the Parties, to the extent applicable.

XII. Enforcement and Venue.

The Parties recognize that the power of state regulatory authority to award certain remedies to cure or to prevent breach of this Settlement Agreement, which the state regulatory authority has jurisdiction to approve, may be limited by the constitution or laws of the state. Accordingly, in the event of a breach or threatened breach, a Party may petition for simultaneous enforcement of this Settlement Agreement both at the state regulatory authority and in a state or federal court with jurisdiction over the Parties and territorial jurisdiction over the county where the state regulatory authority has its headquarters, provided, however, that a Party is not entitled to duplicative remedies. Disputes within the scope of the dispute resolution procedures of the Revised SQM and SEEM Plans shall be governed by the dispute resolution procedures in the Revised SQM and SEEM Plans.

IN WITNESS WHEREOF, the Parties have fully executed this Settlement Agreement as of the date of the last signature below.

BellSouth Telecommunications, Inc.	Competitive Carriers of the South, Inc.
	
(Signature)	(Signature)
Ronald M. Pate	
(Print Name)	(Print Name)
Director	
(Title)	(Title)
March 12, 2010	
(Date)	(Date)

agreements, arrangements, understandings, communications, representations or warranties, both oral and written, related to the Settlement Agreement and attached Revised SQM and SEEM Plans.

X. Binding on Successors/Assigns.

Upon the date of execution hereof, this Settlement Agreement shall be binding on both Parties, and their respective successors and assigns.

XI. Headings.

The Preamble and Section headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement. However, the contents of the Preamble are considered part of the binding obligations of the Parties, to the extent applicable.

XII. Enforcement and Venue.

The Parties recognize that the power of state regulatory authority to award certain remedies to cure or to prevent breach of this Settlement Agreement, which the state regulatory authority has jurisdiction to approve, may be limited by the constitution or laws of the state. Accordingly, in the event of a breach or threatened breach, a Party may petition for simultaneous enforcement of this Settlement Agreement both at the state regulatory authority and in a state or federal court with jurisdiction over the Parties and territorial jurisdiction over the county where the state regulatory authority has its headquarters, provided, however, that a Party is not entitled to duplicative remedies. Disputes within the scope of the dispute resolution procedures of the Revised SQM and SEEM Plans shall be governed by the dispute resolution procedures in the Revised SQM and SEEM Plans.

IN WITNESS WHEREOF, the Parties have fully executed this Settlement Agreement as of the date of the last signature below.

BellSouth Telecommunications, Inc.	Competitive Carriers of the South, Inc.
<hr/>	<hr/>
(Signature)	<i>Susan J. Berlin</i>
<hr/>	<hr/>
(Print Name)	Susan J. Berlin
<hr/>	<hr/>
(Title)	President
<hr/>	<hr/>
(Date)	3-12-2010
<hr/>	<hr/>
(Date)	