

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION CONCERNING THE)	
PROPRIETY OF PROVISION OF INTERLATA)	CASE NO.
SERVICES BY BELL SOUTH)	2001-00105
TELECOMMUNICATIONS, INC., PURSUANT)	
TO THE TELECOMMUNICATIONS ACT OF)	
1996)	
PETITION OF BELL SOUTH)	CASE NO.
TELECOMMUNICATIONS, INC. FOR THE)	2004-00391
ESTABLISHMENT OF A NEW PERFORMANCE)	
PLAN)	

O R D E R

On June 9, 2009, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") petitioned the Commission for a waiver from payment of a \$35,200 fine to the Commonwealth of Kentucky for posting incorrect performance data under the Service Quality Measurement Plan ("SQM") for March 2009. The SQM and the Self-Effectuating Enforcement Mechanism Plan ("SEEM") have been in place in Kentucky since 2001 and are designed to ensure that AT&T Kentucky's operational support systems are non-discriminatory and commercially viable to support and sustain the entry of competitive local exchange carriers ("CLECs") into markets where AT&T Kentucky serves as the dominant carrier. One of the primary purposes of the SQM and SEEM plans is to make certain that AT&T Kentucky adheres to certain performance measures as a dominant carrier wherein it, essentially, will not treat itself any better

than its competitors for completion of calls, porting of numbers, maintenance, and other areas of telephone service on a wholesale level.

Prior to the merger of BellSouth Telecommunications, Inc. ("BellSouth") and AT&T, Inc., the SQM and SEEM plans were adopted by the Georgia Public Service Commission and eventually mandated and adopted by all of the nine states within the BellSouth region, including Kentucky, with certain variations in each state. The elements of the SQM and SEEM performance plans govern the relationship between BellSouth (now AT&T Kentucky) and CLECs. The obligations under the performance plan are ongoing and, in furtherance of the requirements, AT&T Kentucky must file periodic reports and notifications with each state commission and provide notice of any issues or concerns stemming directly from the performance of the operational support system providing certain wholesale data relied upon by CLECs. Certain portions of the SQM and SEEM performance plans require AT&T Kentucky to pay financial remedies to CLECs when AT&T Kentucky fails to meet certain measures. Certain portions of the SQM and SEEM performance plans also require the payment of civil penalties to state commissions when AT&T Kentucky submits late or incomplete SQM reports.¹

Within the current petition, AT&T Kentucky states that an error in the coding used to post information caused particular activity for the Service Order Accuracy ("SOA") measurement to be posted under resale disaggregation results when it should have been posted under unbundled network element disaggregation results. After a CLEC has submitted a service order request to AT&T Kentucky, SOA measures the accuracy and completeness of the CLEC's request once it is fulfilled. AT&T Kentucky states that

¹ See Kentucky SEEM Administrative Plan, Section 2.

the coding used to calculate SEEM remedies was correct at all times and, therefore, all competitors received their appropriate SEEM remedy payments. However, AT&T Kentucky states that, although it self-identified the posting errors for SQM data while validating performance information for March 2009, the SQM plan has a penalty integrated within it, as discussed previously in this Order, and AT&T Kentucky is obligated to pay that penalty to the state commission unless a waiver is granted. AT&T Kentucky's ability to seek relief from liability before a commission is provided in Section 4.5 of the Kentucky SEEM plan.² AT&T Kentucky argues that the total fine to be paid to the Commonwealth of Kentucky for the error and the reposting would equal \$35,200. The total fine to be paid for all of the nine states within the BellSouth/SouthEast region would equal approximately \$316,800, pursuant to the SQM plans adopted by each state commission. AT&T Kentucky argues that the \$35,200 to be paid to Kentucky would be excessive, unduly punitive, and inconsistent with the SQM plan, since competitors were never harmed by the inaccurate posting and received their remedy payments on time.

On June 24, 2009, the Commission set forth a procedural schedule allowing the other parties to these proceedings to have 20 days to submit responses or comments on the petition. AT&T Kentucky would have 10 days to reply to any filings. However, no CLEC or party to these proceedings filed comments or objections to AT&T Kentucky's request.

² As cited by AT&T Kentucky on page 2 of the petition, Section 2.6 of the Kentucky SEEM plan outlines a specific time frame by which the company must pay the reposting fine if the state commission has not issued a ruling alleviating AT&T Kentucky from liability. AT&T Kentucky states that, if the state commission issues a ruling after the denoted time period and AT&T Kentucky has processed payment, it will recover the payment by offsetting the fine against future payments owed for SEEM Tier-2 liabilities.

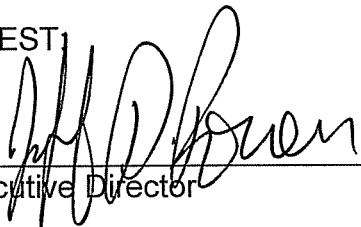
In determining whether the petition for a waiver is in the public interest, avoids harm and discriminatory treatment of CLECs, and can be viewed as reasonable, the Commission has taken into consideration AT&T Kentucky's remedial acts to correct the reporting issue and has considered that the affected competitors received the appropriate payments under the SEEM performance plan. The Commission has given fair opportunity for any interested party to this proceeding to provide comments or objections to AT&T Kentucky's request. However, no competitor has done so. Having reviewed the petition and the terms of the SQM and SEEM plans, the Commission declines to make the finding that the fine of \$35,200 would qualify as excessive or punitive but, rather, finds that the imposition of the reposting fine is simply not warranted for this specific occurrence. The Commission makes this finding, primarily, because the SEEM remedy payments due for that period were made in a timely manner to the affected competitors for AT&T Kentucky's failure to meet certain performance measures and, therefore, the basic intent of the SQM and SEEM plans is being fulfilled. The Commission notes that, under a different set of facts, particularly, if there had been direct evidence that CLECs had been adversely affected by the incorrect SOA reporting information, the Commission's decision as to the appropriateness of a penalty payment owed to the state would likely have been different than the finding enumerated herein. As for the current petition, the Commission hereby orders that AT&T Kentucky's request for a waiver from payment should be granted.

IT IS THEREFORE ORDERED that AT&T Kentucky's request for relief from the obligation to pay a reposting fine in the amount of \$35,200 in connection with the SOA data reporting error outlined within the petition is granted.

By the Commission

ENTERED *GW*
AUG 26 2009
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

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