

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL**

PETITION OF THE OFFICE OF	:	DOCKET NO. 08-07-15
CONSUMER COUNSEL FOR	:	
ENFORCEMENT OF QUALITY	:	
SERVICE STANDARDS FOR	:	
THE SOUTHERN NEW ENGLAND	:	
TELEPHONE COMPANY D/B/A	:	
AT&T CONNECTICUT	:	April 3, 2009

**BRIEF OF RICHARD BLUMENTHAL, ATTORNEY
GENERAL FOR THE STATE OF CONNECTICUT**

Richard Blumenthal, Attorney General for the State of Connecticut (“Attorney General”), hereby files his brief in the above-captioned proceeding. For the reasons fully described herein, the Department of Public Utility Control (“DPUC” or “Department”) should find that the Southern New England Telephone Company d/b/a AT&T Connecticut (“AT&T”) has consistently failed to meet applicable quality of service standards. AT&T – a company with \$1.4 billion total operating revenue levels in 2007 – has never cleared 90 percent of all out-of-service (“OOS”) repairs within 24 hours as required by Regulations of Connecticut State Agencies (“Conn. Agencies Regs.”) § 16-247g-2(a)(5) since this standard was imposed in April of 2001. Moreover, AT&T has failed to file appropriate exception reports related to the OOS repair standard. In addition, AT&T has fallen short with regard to other quality of service measures, such as average speed of answer (“ASA”) and abandoned call ratio.

The Department should impose meaningful financial penalties upon AT&T for its persistent failure to meet this standard and file appropriate compliance reports. These penalties should include a \$10,000 civil penalty for each of the 92 times that AT&T failed to file an appropriate compliance report from March 30, 2001 through December 24, 2008, or a total civil

penalty of \$920,000. In addition, the Department should require AT&T to submit a plan within 30 days of the final decision in this proceeding to improve its compliance with the OOS repair standard metric. This plan should, among other things, specifically address whether AT&T's staffing levels in Connecticut are sufficient to provide adequate quality of service in the State. The DPUC should also adopt regulations that govern AT&T's compliance with other service quality standards as it has done with the OOS repair standard. These other service quality measures include ASA, abandoned call ratio and calls answered within 60 seconds.

I. INTRODUCTION

On July 24, 2008, the Connecticut Office of Consumer Counsel ("OCC") petitioned the DPUC to enforce the existing service repair standard and order call center improvements for AT&T pursuant to Conn. Gen. Stat. §§ 16-25a; 16-247a; 16-247p(a); and 16-41 and Conn. Agencies Regs. §§ 16-247g-2; 16-247g-6 and 16-247g-9. AT&T provides landline service to the vast majority of telephone customers in Connecticut.¹ AT&T's customers in Connecticut should be able to expect reasonable service in exchange for the rates that they pay for that service.

Unfortunately, however, AT&T's customers have not received reasonable levels of service. For years, AT&T has failed to meet established service quality standards for OOS repair time. Since 2001, AT&T has been required to repair 90% of out-of-service lines within 24 hours. AT&T, however, has never met the required 90% standard. AT&T has also delivered sub-par performance with regard to average speed of answer ("ASA") and percentage of customer calls abandoned. The DPUC must take appropriate action in this proceeding to address

¹ AT&T had 1.67 million access lines in service in the State as of December 31, 2007. DPUC's Decision, Docket No. 07-01-04, 2007 Annual Report to the General Assembly on the Status of Telecommunications in Connecticut, 10. AT&T testified in this proceeding that every month it bills its customers for 1.4 million access lines. AT&T Pre-Filed Testimony ("PFT"), 14.

AT&T's inadequate customer service. It can no longer turn a blind eye to AT&T's persistent failure to provide reasonable service.

The proceeding does not represent the first time that the Department has been asked to address AT&T's inadequate quality of service. In 2002, the Attorney General requested that the DPUC investigate the then-recent downsizing of AT&T's workforce and the effects that it would have on the company's service quality. On December 12, 2002, the Department recognized:

that the Telco has failed to meet its OOS Repair objective over the last two years. However, pursuant to the terms and conditions of the Price Cap Formula, the Company's inability to meet the OOS Repair objective will be addressed during the Telco's annual price cap filing with the Department and most likely result in the imposition of a financial penalty and a negative adjustment to the Telco's Price Cap formula.

The DPUC also noted at that time that the Attorney General's request to investigate AT&T's service quality, in light of its then-recent layoffs, was premature because "no evidence or data has been presented which demonstrates that the Telco's service quality and performance has been impaired due to the employee layoffs."

The Attorney General respectfully submits that Department action on this important matter can no longer be considered premature. AT&T had failed to meet the OOS repair standard prior to the Attorney General's 2002 request and has consistently failed to meet that standard each and every month since that time. Moreover, the evidence presented in this proceeding clearly demonstrates that AT&T's sub-standard and declining service quality continues to correlate with the steady downsizing of its Connecticut workforce. The imposition of meaningful financial penalties was appropriate in 2002 and remains appropriate now.

II. SCOPE OF PROCEEDING

Conn. Gen. Stat. §16-247a(6) states that the goal of the State of Connecticut is to ensure that providers of telecommunications services in the state "provide high quality customer service

and high quality technical service.” Section 16-247p(a) of the Connecticut General Statutes requires the DPUC to establish telecommunications performance standards, including measures relating to service outages and standards for the timeliness in responding to complaints or reports and shall include methodologies for the enforcement of such standards.

The Department has adopted certain performance standards in regulations. Among them is Conn. Agencies Regs. §16-247g2(a)(5), which provides that “Out of Service Repair standard requires 90 percent of all service repairs received by the company in any given 24-hour period shall be cleared within 24 hours.” Moreover, Conn. Agencies Regs. §16-247g2(c) states that:

[i]f performance on any standard falls below the minimum level for three consecutive months, the company shall file with the department an exception report no later than 30 days following the end of the period in question. Any exception report filed in such circumstances shall have appended to it an explanation of the reasons for the result and proposed solution, including the steps necessary to bring performance up to the minimum level, and a timetable for such improvement. Each telecommunications provider shall in preparing such reports, consider comments from its employees or members of collective bargaining units. . . .

The DPUC has bifurcated the present proceeding into two distinct phases. The current Phase, known as Phase I, focuses solely on AT&T’s compliance with the Retail Service Quality Standards. DPUC Order re Scope of Proceedings, dated October 9, 2008. In a subsequent phase of this docket, the DPUC will consider the applicability of those standards in light of the changes to the Connecticut telecommunications market. Id. In fact, to make this distinction perfectly clear, the Department stated in its February 17, 2009 ruling on Motions 19 and 21 that “issues associated with the reasonableness of current regulations will be given no weight in Phase I of this proceeding.” Thus, it is clear that the current phase of this case is not about whether the existing quality of service standards, including the OOS metric, are reasonable or should apply to

AT&T. Rather, this case is about AT&T's compliance with those standards and what the DPUC should do to address AT&T's persistent failure to comply.

III. DISCUSSION

There is absolutely no dispute as the central issue presented in this case. AT&T has failed to comply with the OOS repair standard metric since its adoption in 2001. Moreover, the exception reports that AT&T must file concerning its persistent failures have been facially non-compliant and the "penalties" that AT&T has paid as a result of these failures pursuant to its alternative regulation scheme have been entirely inadequate. The evidence presented in this case also demonstrates that AT&T's performance with regard to other quality of service measures has been lacking. Further, the evidence shows quite clearly that AT&T's sub-standard quality of service in Connecticut correlates closely with the downsizing of the company's workforce in the State.

A. Out of Service Repairs

1. AT&T has Not Met the DPUC's OOS Standard Since Its Adoption in 2001

As noted supra, Conn. Agencies Regs. § 16-247g-2(a)(5) requires that AT&T clear 90% of all OOS repairs within 24 hours. See Tr. 370. Also, as discussed above, Conn. Agencies Regs. §16-247g2(c) requires AT&T to file with the DPUC an "exception report" if its performance on the OOS standard falls below the 90% level for three consecutive months. Each such report must include an explanation of the reasons for the failure and a proposed solution. Moreover, when preparing these reports AT&T must consider comments from its employees or members of its collective bargaining units. In addition, in Docket No. 95-03-01, Application of Southern New England Telephone Company for Financial Review and Proposed Framework for

Alternative Regulation, the DPUC required AT&T to periodically submit a number of compliance filings, including filings that show AT&T's performance relative to other quality of service standards.

AT&T has never met the applicable OOS repair standard. In every single month that AT&T has filed reports concerning the OOS metric, from April 2001 through March 2008, AT&T has failed to meet its out-of-service repair standard. See Docket No. 95-03-01, Order No. 11, Attachment A. In fact, of the 84 months of the company's reporting (April 2001 – March 2008), AT&T has reached 80% in only three months and was below 60% for 43 months. In 16 of those months, AT&T was below 50%. AT&T's annual average compliance is as follows:

2001 – 60.2%;
2002 – 59.5%
2003 – 59.8%
2004 – 59.6%
2005 – 53.9%
2006 – 54%
2007 – 72.5%
2008 – 54.6%.

AT&T PFT, 11. See also Late File Exhibit (“LF”) 29.

AT&T has reported thousands of OOS incidents in which it has taken more than 24 hours to repair each month. LFE-4. For example, in 2007, the lowest number of OOS incidents of greater than 24 hours in a month was 1,514 (February) and the highest number in a month was 6,695 (October), and AT&T averaged 3,906 per month. The average duration of such outages was 41.85 hours. LFE-4. Similarly, in 2008 (January through October), the lowest number of OOS incidents of at least 24 hours was 3,191 (October) and the highest number was 8,966 (February), and AT&T averaged 6,385/month and the average duration of those outages was 53.2 hours. LFE-4.

Moreover, AT&T's service quality on weekends tends to be worse than its normally inadequate performance. This is because, until recently, the company's staffing levels on weekends were far below weekday sizes. As a result, out-of-service repair calls that were made on Fridays were often unlikely to be addressed until well into the following week. See OCC-3. In mid-January 2009, AT&T increased its staffing levels by 47 percent on Saturdays and by 13 percent on Sundays compared to 2008 staffing levels. LF-28.

2. The Extent of AT&T's Failure to Meet the OOS Standard is Understated

The data that AT&T provided in this case with regard to its OOS performance include a number of "exclusions" that AT&T has made in its calculations for the OOS metric. These exclusions have had the effect of overstating AT&T's performance with regard to this important metric. See LF-1. Moreover, AT&T applied these exclusions to its calculations without DPUC approval. AT&T stated in this proceeding that it relied on an auditor's report in a 2003 audit which stated that "a change in the exclusions and exceptions rules would not be unreasonable or unfair." See Docket No. 02-02-10, DPUC Management Audit of the Southern New England Telephone Company's Accounting Practices of its Service Quality Performance Measures). LF-1. An auditor's support for the general concept of exclusions, however, is a far cry from explicit Department approval of any such exceptions from AT&T's OOS calculations.

Specifically, for as long as AT&T has reported on OOS compliance it has excluded from its figures service trouble reports that it considered "non-customer impacting," such as its own lines and wholesale lines, apparently without DPUC authorization. AT&T PFT, 42; Tr. 476, 481-482. AT&T also excluded from its OOS calculations occasions when technicians were unable to gain access to the premises. AT&T PFT, 42. AT&T could not, however, identify any specific DPUC approval or authority to make this exclusion from its calculations. In fact, it

never sought any such approval from the Department. Tr. 481-182. Again, this exclusion has had the effect of understating the extent to which AT&T has failed to meet the 90% OOS repair metric. LF-29.

In addition, since August 2008 AT&T has applied a so-called “third party outage exclusion” from its OOS calculations. LFE-1; Tr. 90; Supplement No. 1, Tr. 721-722. This means that AT&T left out of its calculations outages that the company determined – on its own – were caused by entities other than AT&T. Again, AT&T applied this exception without DPUC approval. Tr. 90-91. The application of this exception is entirely inappropriate. The purpose of the OOS metric is to measure how long it takes AT&T to fix its outages, without regard to who or what was at fault for the outage. Moreover, this exception clearly skewed AT&T’s OOS results. If this exclusion were not applied, AT&T’s OOS repair time within 24 hours would fall another two to three percent. LF-1; Supplement No. 1, Tr. 721-722.

In this proceeding, AT&T also expressed an interest in applying even more exceptions to its OOS repair data, including a “weather” exception and a “holiday/weekend” exception. See Tr. 221. Clearly, the application of these additional exceptions would further understate the extent to which AT&T has failed to meet the applicable OOS repair standards.

3. AT&T’s OOS Repair History is Entirely Inadequate and Declining

AT&T’s OOS standard performance falls far below that of Woodbury Telephone Company (“Woodbury”), which has routinely met the DPUC’s 90% standard. TE-23.

Woodbury exceeded the 90% objective in 2002, 2003, 2004, 2005, 2006 and 2007, though it did not meet the applicable criteria for certain periods in 2001, 2002, 2003 and 2004.

Moreover, not only has AT&T’s quality of service has been inadequate since 2001, it has deteriorated recently. Baldwin PFT, 7. AT&T’s performance in 2008 was worse than its eight-

year average. Baldwin PFT, 22-24. In addition, the average wait time that customers must endure for repairs to OOS lines has increased from 2007 to 2008. Baldwin PFT, 15; LF-4. See also Ex. SMB-C-1 and SMB-C-2 (which compare the number of OOS incidents that exceed 96 hours in duration from 2007 with 2008 and further confirm this trend).

Another concern is the indication fact that AT&T's quality of service appears to vary geographically across the State of Connecticut, although it fails to meet the standard in every region. Baldwin PFT, 24. The urban areas of New Haven and Hartford areas seem to receive worse quality of service than other parts of the state. Baldwin PFT, 25. This likely coincides with AT&T's selective roll-out of its U-Verse video product, with the areas receiving the U-Verse product getting better quality of service.

4. AT&T's Exception Reports, As Well as the "Penalties" That It Has Paid As a Result of its Failure to Meet the OOS Metric, Have Been Entirely Inadequate

As a result of its failures to meet the OOS metric, AT&T filed periodic exception reports since March 2001 for its persistent failures to meet this standard. Baldwin PFT, 12. These exception reports are filed in DPUC Docket No. 99-07-28, DPUC Promulgation of Quality of Service Regulations for Connecticut Telephone and Certified Telecommunications Providers. AT&T's filed reports, however, are not complete in that they do not explain the reasons for the result or propose solutions to bring performance up to the required levels. Baldwin PFT, 42. Moreover, these reports do not appear to consider comments from employees or members of collective bargaining units as required by Conn. Agencies Regs. §16-247g2(c). AT&T acknowledged during cross-examination in this proceeding that its reports are not compliant. Tr. 541-543.

In addition, although AT&T claims that it has paid financial penalties for its failure to meet the OOS repair standard pursuant to its alternative regulation plan, those penalty payments have been entirely too small to penalize AT&T for its non-compliance or to encourage future improvement. AT&T's annual price cap filings in Docket No. 95-03-01, Application of Southern New England Telephone Company for Financial Review and Proposed Framework for Alternative Regulation, dated May 1, 2008 and May 1, 2007, show that AT&T's penalty payments range from \$7,000 to \$8,000 per year, far below the company's \$1.4 billion total operating revenue levels in 2007. Baldwin PFT, 47. For a company that appears to have earned a return on equity, measured on a total company basis, of nearly 30% for 2007 – the majority of which is likely attributable to its unregulated services – these penalties are far too insignificant to impact AT&T's compliance with the relevant quality of service standards. See SNET Financial Statements for Year Ended December 31, 2007. Certainly, it should be entirely affordable for AT&T to meet the service standards for its regulated customers.

B. Other Quality of Service Failures

AT&T's service quality shortcomings have not been limited to its failure to meet the OOS metric.

1. Average Speed of Answer

Pursuant to Conn. Agencies Regs. §16-247g-6(a), “[e]ach company shall have sufficient employees on duty to respond promptly and accurately to all inquiries, complaints and other service requests made to it by telephone.” The DPUC monitors telecommunications companies' compliance with this regulation and annually reports to the legislature on each company's performance.

Among the measures for responding promptly is the “average speed of answer” metric, or “ASA.” AT&T’s call center statistics for ASA were the poorest of all reporting companies in 2006 and 2007. CSU-3; 07-01-04, 2007 Annual Report to the General Assembly on the Status of Telecommunications in Connecticut, 30. See also Docket No. 08-01-07, DPUC 2008 Annual Report to the General Assembly on the Status of Telecommunications in Connecticut, 27.

AT&T averaged 121.2 seconds and 148.5 seconds to reach a live consumer representative for 2006 and 2007 respectively, far behind Verizon and Comcast which were in the neighborhood of 30 seconds. Id. Currently, AT&T is averaging one minute to get from the company’s IVR (integrated voice response) system to a live representative, but it takes roughly 80 seconds for a customer to complete the IVR process first. Tr. 404-405.

2. Abandoned Calls

For calls abandoned by customers, AT&T was the worst of all companies reporting. In 2006 and 2007, AT&T customers abandoned calls at a rate of 12.1% and 10.8% respectively, while other companies were in the 2-3% range. 07-01-04, 31. AT&T only met its internal goal for percentage of abandoned calls 73% of the time from January 2006 through January 2009. LF-19.

AT&T questioned the accuracy of this metric, stating that there are many reasons why customers may not wait on hold, AT&T PFT, 26-27, including that something may come up to distract the customer. Tr. 68. This is absurd. First, this explanation certainly holds true for other companies reporting on this metric. Second, the likelihood of a customer being distracted while on hold presumably increases in direct proportion to the length of time that the customer is made to wait on hold.

3. Calls Answered Within 60 Seconds

For calls answered within 60 seconds, AT&T met that standard only 55.1% and 58.5% of the time, as opposed to other companies that were in the 70% and 80% range. 07-01-04, 31.

C. AT&T's Declining Quality of Service Correlates With The Company's Downsizing of its Connecticut Workforce

The evidence presented in this case shows a consistent failure to meet the OOS repair metric over the last eight years. This inadequate performance correlates directly with the decline in the number of AT&T service-related employees that the Company has maintained in Connecticut.² From 2001 to 2008, the number of AT&T management employees has fallen from 1,471 to 733, the number of bargaining unit employees has dropped from 5,225 to 3,358 and the total number of employees in the state has declined from 6,696 to 4,091. OCC-4R. This includes the 2008 closure of the company's inside (611) repair call center in Meriden, Connecticut, the transfer of these jobs to Brecksville, Ohio and the declaration that 108 Connecticut repair call center jobs were "surplus." OCC-7R. It also includes the transfer of the dispatch function to Southfield, Michigan and 60 Connecticut-based maintenance and administrative jobs being declared "surplus." OCC-7R. Moreover, the number of residential repair technicians has steadily declined since 2000, from 1,089 in 2000 to 569 in 2008, as has the ratio of technicians per 10,000 lines, from 4.6 in 2000 to 3.9 in 2008. Supplement Amended LF-33. Indeed, the extent of the drop in the number of AT&T's technicians in Connecticut has been far more than the any drop in the number of the company's access lines in the State. Tr. 562-563.

² In the DPUC December 26, 2008 ruling in this case, it stated that, "[w]ith regard to the AG's request to fully scrutinize the workforce and capital expenditure reductions and their effect on AT&T's quality of service and the impact on public safety, the Department expects that these issues will be fully explored on the record of this proceeding."

AT&T argued in this case that it has a sufficient workforce in Connecticut to do the necessary repair work because by the “end of the month,” it has cleared its troubles. Tr. 45-46. The evidence presented in this case, however, simply does not bear this out. Moreover, the OOS repair standard, however, standard requires out of service lines to be cleared within 24 hours, not by the month’s end.

IV. REMEDY

This case is about far more than numbers and statistics. Reliable telephone service is critical to public safety. Basic telephone service is often the only lifeline to the outside world, particularly for many vulnerable populations in Connecticut, including the elderly, low income and children, many of whom do not have access to cell phones or other technology. See Baldwin PFT, 13-14.

The evidence presented in this case included real-world examples of the impacts that AT&T’s failure to meet the OOS repair standard has had on Connecticut residents. LF-31 contains a very small sample of complaints from customers who were forced to endure a total lack of telephone service for five or six days at a time before AT&T fixed the problem. For example, these complaints contained such statements as “Five days without a telephone was a nightmare for a senior citizen living alone.” LF-31. Moreover, these complaints included those from elderly and infirm customers who feared the lack of 911 service as well as a mother with small children who cannot receive cell phone service from inside her home.

The DPUC must take three affirmative steps to enforce the existing performance standards and reporting requirements in order to improve AT&T’s quality of service. The Department’s unfortunate history of turning a blind eye to AT&T’s persistent failures has not

helped improve AT&T's OOS repair time performance. Rather, it has just allowed the inadequacies to further erode.

First, the DPUC should impose meaningful financial penalties for AT&T's failure to comply with long-standing OOS metrics. The financial penalties for poor quality of service must be meaningful enough to correct the behavior. The Q-Factor in AT&T's alternative regulation plan, which imposes fines for failures to meet its quality of service standards, has proven to be entirely inadequate. These penalties have amounted to little more than about \$8,000 per year for AT&T's chronic failure to meet the applicable OOS repair standard. Baldwin PFT, 46-47.

Moreover, AT&T's exception reports were not compliant with the relevant Connecticut regulatory standards in that they did not include steps necessary to bring AT&T into compliance, from March 30, 2001 through December 24, 2008. This amounts to 92 distinct violations. Conn. Gen. Stat. § 16-41 allows a civil penalty of \$10,000 per violation, which in this case comes to \$920,000. Baldwin PFT, 42-43.

In addition, pursuant to Conn. Gen. Stat. § 16-247p(a), the Department's performance standards must include methodologies for the enforcement of those standards. If no such standards exist, must be designed and implemented. The DPUC must require AT&T to comply with Conn. Agencies Regs. §16-247g2(c) which requires AT&T to file exceptions reports within 30 days of failing to meet the standards for three consecutive months explaining the reasons for the result and the proposed solution, including steps necessary to raise performance up to the minimum level, and a timetable for such improvement.

Second, the Department should require AT&T to submit a plan within 30 days of the issuance of the DPUC's final decision in this case demonstrating how the company intends to improve its OOS repair performance and bring it into compliance with the OOS repair metric.

This plan should specifically address AT&T's staffing levels in Connecticut and whether those levels are sufficient to provide adequate quality of service in the State. The DPUC should require Department approval of that plan and should impose penalties for failure to carry-out the DPUC-approved plan. Third, the DPUC should adopt regulations that govern ASA, Abandoned Calls and Calls answered within 60 seconds, just as it has done with OOS.

WHEREFORE, for the foregoing reasons, the Attorney General respectfully submits that the DPUC should find that AT&T has failed to comply with applicable quality of service standards and related regulations and should impose meaningful financial penalties upon AT&T for those failures.

Respectfully submitted,

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Service is hereby
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