

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of Clective Telecom Florida, LLC for apparent failure to accurately disclose information on application.

DOCKET NO. 090480-TX

In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Cbeyond Communications, LLC by Clective Telecom Florida, LLC.

DOCKET NO. 090246-TP
ORDER NO. PSC-10-0210-PAA-TP
ISSUED: April 5, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. "STEVE" STEVENS III

NOTICE OF PROPOSED AGENCY ACTION
ORDER FORFEITING CLEC CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Case Background

On August 13, 2008, Clective Telecom Florida, LLC (Clective) applied for a Competitive Local Exchange Telecommunications Company (CLEC) certificate to provide local telecommunications service in Florida.¹ The Florida Public Service Commission (Commission) issued CLEC Certificate No. 8736 to Clective on October 31, 2008. On May 6, 2009, we issued

¹ Docket No. 080545-TX – In re: Application for certificate to provide competitive local exchange telecommunications service by Clective Telecom Florida, LLC.

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Proposed Agency Action (PAA) Order No. PSC-09-0298-PAA-TX² penalizing Clective \$500 for failing to pay its 2008 regulatory assessment fee (RAF). The company retained its CLEC certificate by paying the RAF and penalty.

On April 29, 2009, Clective filed a notice of adoption of an Interconnection Agreement (ICA) in Docket No. 090246-TP.³ On May 8, 2009, BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) filed an objection to notice of adoption and petition to cancel Clective's CLEC Certificate No. 8736 (Objection) in Docket No. 090246-TP.

In its Objection and additional filings, AT&T alleged that Clective did not have the managerial and financial capability to provide CLEC services. AT&T cited the actions of Clective GA, Incorporated (Clective GA), which has the same managerial team as Clective, to support this claim. AT&T provided documentation showing that Clective GA is in the midst of bankruptcy proceedings, as well as that it is apparently unable to satisfy its financial obligation to AT&T.

When a company applies for a CLEC certificate, the company must show managerial, technical and financial capabilities. Companies are to show technical capability by providing resumes of individuals that would indicate sufficient technical capability. In its Objection and additional filings, AT&T also alleged that Clective had misrepresented the identity of one of the individuals provided in support of its technical capability in its Florida CLEC application in 2008.

In answer to a question concerning Docket No. 090246-TP during the August 18, 2009 Agenda Conference, Clective confirmed that it used an alias for a Mr. Jeffrey Noack on its CLEC application. Clective offered Mr. Noack's experience under the name "Joseph Nichols" to show technical capability on the application. Counsel for Clective stated that it did so because of AT&T's apparent prejudice against Mr. Noack for his association with Global NAPS, Inc.⁴ Based primarily on that information, we, on our own motion, directed our staff to open an investigation of Clective's CLEC application.

On September 22, 2009, our staff sent a data request to Clective FL. In the data request, they asked Clective to provide detailed information and documentation concerning its managerial, technical and financial capability, with specific questions concerning Mr. Noack. Clective responded via facsimile on October 6, 2009.

² Docket No. 090221-TX – In re: Compliance investigation of CLEC Certificate No. 8736, issued to Clective Telecom Florida, LLC, for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

³ Docket No. 090246-TP – In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Cbeyond Communications, LLC by Clective Telecom Florida, LLC

⁴ AT&T has been in litigation with Global NAPS, Inc. (CLEC Certificate No. 5691) in several states, including Florida, regarding a dispute over payment of access charges, and has disconnected Global NAPS, Inc. in Florida for nonpayment of those charges.

After reviewing Clective's response, our staff found additional cause for concern with Clective's CLEC application. On November 17, 2009, our staff filed its recommendation in Docket No. 090480-TX, recommending that we cancel Clective's CLEC Certificate No. 8736, and refer Clective to the appropriate authority for determination whether criminal charges would be appropriate regarding apparent violation of Section 837.06, Florida Statutes (F.S.).⁵ At Clective's request, the item was deferred from the December 1 and December 15, 2009 Agenda Conferences, then rescheduled for the January 26, 2010 Agenda Conference.

On January 22, 2010, Clective offered to voluntarily forfeit its CLEC Certificate No. 8736 and cease doing business in Florida in order to resolve its apparent failure to accurately disclose information on the CLEC application in Docket No. 080545-TX. In light of Clective's settlement offer, our staff withdrew its recommendation from the January 26, 2009 Agenda Conference.

We are vested with jurisdiction in these matters pursuant to Sections 364.285, 364.335, 364.337, 364.345, F.S.

II. Analysis

Pursuant to Rule 25-24.820, Florida Administrative Code (F.A.C.), we may cancel a certificate for violation of a term or condition under which the authority was originally granted. Section 364.335(1)(a)&(d), F.S., Application for a Certificate, states:

(1) Each applicant for a certificate shall:

(a) Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service.

* * *

(d) Submit an affidavit that the applicant has caused notice of its application to be given to such persons and in such manner as may be prescribed by commission rule.

Further, Section 364.337(1), F.S., provides in part that we shall grant a certificate of authority to provide competitive local exchange service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service. Rule 25-24.810, F.A.C., Application for a Certificate, requires that an applicant for a certificate shall submit a completed Form PSC/RCP 8 (5/08) entitled "Application Form for Authority to Provide Competitive Local Exchange Service Within the State of Florida," and is incorporated into this rule by reference.

⁵ Section 837.06, F.S., provides that whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her duty shall be guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082 or 775.083, F.S.

Form PSC/RCP 8 (5/08) contains a section whereby the applicant is required to submit resumes of employees and officers of the company that would indicate sufficient managerial and technical experience to manage, operate, and maintain a telecommunications company. Clective FL submitted resumes with its application for a CLEC certificate in Docket No. 080545-TX. we granted Clective a CLEC certificate based upon the resumes and other information provided by Clective with its application.

On January 22, 2010, Clective submitted the following offer to settle the issues in Docket No. 090480-TX.

1. to voluntarily forfeit CLEC Certificate No. 8736 with prejudice;
2. to pay the 2009 regulatory assessment fees for its CLEC certificate (payment has been received by this Commission);
3. to not undertake the offering of telecommunications services in Florida; and
4. to close the business as of December 31, 2009.

III. Decision

We note that there have been no customer complaints filed against Clective. In addition, Clective has paid all of its regulatory assessment fees.

Accordingly, we find it appropriate to accept Clective Corp's offer to voluntarily forfeit, with prejudice, CLEC Certificate No. 8736, effective December 31, 2009, to resolve the company's apparent failure to accurately disclose information in Docket No. 080545-TX, In re: Application for certificate to provide competitive local exchange telecommunications service by Clective Telecom Florida, LLC.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Clective Telecom Florida, LLC's offer to voluntarily forfeit, with prejudice, CLEC Certificate No. 8736, effective December 31, 2009, to resolve the company's apparent failure to accurately disclose information in Docket No. 080545-TX, In re: Application for certificate to provide competitive local exchange telecommunications service by Clective Telecom Florida, LLC, shall be accepted. It is further

ORDERED that in the event this Order becomes final, Docket Nos. 090480-TX and 090246-TP shall be closed.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by

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the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business of the date set forth in the "Notice of Further Proceeding attached hereto.

By ORDER of the Florida Public Service Commission this 5th day of April, 2010.



ANN COLE
Commission Clerk

(S E A L)

TLT/VSM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 26, 2010.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.