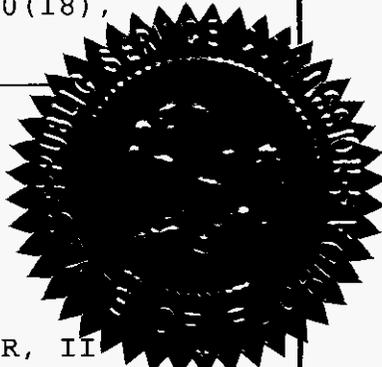


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090135-TP

In the Matter of:

COMPLAINT AGAINST BELLSOUTH TELECOMMUNICATIONS,  
INC. D/B/A AT&T FLORIDA D/B/A AT&T SOUTHEAST FOR  
ANTICOMPETITIVE BEHAVIOR IN VIOLATION OF SECTIONS  
364.01(4), 364.10(1), AND 364.3381, F.S.,  
VIOLATING TERMS OF INTERCONNECTION AGREEMENT,  
AND ENGAGING IN CRAMMING IN VIOLATION OF SECTIONS  
354.604(2), 364.10(1), F.S., AND RULE 25-4.110(18),  
F.A.C., BY CBEYOND COMMUNICATIONS, LLC.



PROCEEDINGS:                   AGENDA CONFERENCE  
                                  ITEM NO. 3

COMMISSIONERS  
PARTICIPATING:               CHAIRMAN MATTHEW M. CARTER, II  
                                  COMMISSIONER LISA POLAK EDGAR  
                                  COMMISSIONER KATRINA J. McMURRIAN  
                                  COMMISSIONER NANCY ARGENZIANO  
                                  COMMISSIONER NATHAN A. SKOP

DATE:                            Tuesday, May 19, 2009

PLACE:                         Betty Easley Conference Center  
                                  Room 148  
                                  4075 Esplanade Way  
                                  Tallahassee, Florida

REPORTED BY:                 LINDA BOLES, RPR, CRR  
                                  Official FPSC Reporter  
                                  (850) 413-6734

DOCUMENT NUMBER-DATE

05450 JUN-28

FPSC-COMMISSION CLERK.

## P R O C E E D I N G S

\* \* \* \* \*

1  
2  
3           **COMMISSIONER EDGAR:**   And that brings us to  
4 Item 3. We'll look to our staff.

5           **MR. MURPHY:**   The parties are approaching.

6           **COMMISSIONER EDGAR:**   Okay. Then we will give  
7 them a moment to get settled.

8           (Pause.)

9           Yes, sir.

10          **MR. MURPHY:**   I'm Charlie Murphy on behalf of  
11 the Commission staff. Item 3 is a Cbeyond complaint  
12 against AT&T in which Cbeyond alleges anticompetitive  
13 practices, violation of interconnection agreement and  
14 cramming. AT&T has filed a motion to dismiss the  
15 portion of the Cbeyond complaint related to cramming.  
16 Staff recommends that the Commission deny the AT&T  
17 motion to dismiss.

18          **COMMISSIONER EDGAR:**   Commissioner Skop.

19          **COMMISSIONER SKOP:**   Thank you, Madam Chair.  
20 Just a quick clarification on this. On Page 4 of the  
21 staff recommendation AT&T asserted that Cbeyond fails to  
22 meet the first prong of the Agrico test. And I was  
23 reading through the staff recommendation, and following  
24 on to Page 5 the analysis also states that AT&T has not  
25 asserted that Cbeyond's allegations against AT&T for

1 anticompetitive behavior and violations of the  
2 Cbeyond/AT&T interconnection agreement should be  
3 dismissed.

4 I'm trying to get a little bit more comfort  
5 with the standing issue in this case as it pertains to  
6 the cramming allegation to the extent that AT&T has  
7 asserted that the first prong of the test has not been  
8 met, and I also know that staff has discussed this a  
9 little bit, but if you could give a little bit more  
10 clarification. I mean, I could, I could reasonably see  
11 because AT&T has not asserted the allegations for  
12 anticompetitive behavior, violations of the interconnect  
13 should be dismissed, that those would remain and that  
14 would be a case in controversy in itself. But I guess  
15 what's less clear to me is trying to have standing in  
16 light of the AT&T assertion that Cbeyond has that  
17 standing, it's necessary.

18 Now I think on its own the Commission sua  
19 sponte could initiate any investigation it might want to  
20 do, but I need a little clarification there please.

21 **MR. MURPHY:** Right. The facts that support  
22 the anticompetitive behavior would also support  
23 cramming, and it's staff's view that a party can be  
24 harmed by the violation of a Commission rule. And that  
25 in, in our review of this matter, that, that we would

1 like to have the latitude to look at whether Cbeyond's  
2 customers have been crammed. I think to the extent that  
3 we discover that there's cramming going on, we would  
4 look at it -- if we -- we would not make this into a  
5 generic docket. It would become -- it would be a  
6 separate docket for that or a separate show cause  
7 docket. But what we, what we didn't want was an order  
8 that said we can't look at cramming because that does  
9 appear to be something that is fairly alleged by Cbeyond  
10 as having caused them harm.

11 **COMMISSIONER SKOP:** Okay. Fair enough. And I  
12 think that was the point that you helped flesh that out  
13 and I think that's at the footnote at the bottom of Page  
14 5 to the extent that, that the anticompetitive behavior  
15 and the violations of the interconnection agreement will  
16 be looked at as a case in controversy as well as staff  
17 will look at the cramming allegations to the extent  
18 they're inextricably intertwined between the two. But  
19 should a cramming issue arise or there should be  
20 sufficient concern on staff's part, then that will be a  
21 separate show cause proceeding at that time; is that  
22 correct?

23 **MR. MURPHY:** Yes, sir.

24 **COMMISSIONER SKOP:** Thank you. Madam Chair,  
25 if there are no further questions, I'd move staff's

1 recommendation as to Issues 1 and 2.

2 **CHAIRMAN CARTER:** Second.

3 **COMMISSIONER EDGAR:** Okay. We have a motion  
4 and we have a second on all issues for Item 3.  
5 Commissioners, any discussion? Hearing none, all in  
6 favor of the motion, say aye.

7 (Unanimous affirmative vote.)

8 All opposed? Show it approved. Thank you  
9 all.

10 (Agenda item concluded.)

11 \* \* \* \* \*

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF FLORIDA        )  
                                  :                    CERTIFICATE OF REPORTER  
COUNTY OF LEON        )

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 2<sup>nd</sup> day of June, 2009.

Linda Boles  
LINDA BOLES, RPR, CRR  
FPSC Official Commission Reporter  
(850) 413-6734