

Dorothy Menasco

From: Woods, Vickie [vf1979@att.com]
Sent: Friday, July 17, 2009 12:18 PM
To: Filings@psc.state.fl.us
Subject: 090246-TP Letter to Patricia Morris/Clective responding to July 10, 2009 letter to Commission
Attachments: Document.pdf

- A. Vickie Woods
Legal Secretary to E. Earl Edenfield, Jr., Tracy W. Hatch,
and Manuel A. Gurdian,
BellSouth Telecommunications, Inc. d/b/a AT&T Florida
150 South Monroe Street, Rm. 400
Tallahassee, FL 32301-1558
(305) 347-5560
vf1979@att.com
- B. Docket No. 090246-TP: Notice of Adoption of Existing
Interconnection Agreement between BellSouth Telecommunications,
Inc. and Cbeyond Communications, Inc. by Clective Florida, LLC
- C. AT&T Florida
on behalf of Manuel A. Gurdian
- D. 5 pages total in PDF format (includes letter and certificate)
- E. 090246-TP Letter to Patricia Morris of Clective responding to her July 10, 2009 letter to Commission (Ann Cole cc'd on letter)

.pdf

<<Document.pdf>>

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers. GA625

7/17/2009

DOCUMENT NUMBER-DATE

07268 JUL 17 8

FPSC-COMMISSION CLERK



Manuel A. Gurdian
Attorney

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (305) 347-5561
F: (305) 577-4491
manuel.gurdian@att.com

July 17, 2009

Via Facsimile: (203) 547-6326 and U.S. Mail

Patricia Morris
Clective Telecom Florida, LLC
2090 Dunwoody Club Drive
Suite 106-257
Atlanta, GA 30350

Re: Docket No. 090246-TP, Notice of Adoption of Existing Interconnection Agreement between BellSouth Telecommunications, Inc. and Cbeyond Communications, Inc. by Clective Florida, LLC

Dear Ms. Morris:

Please be advised that your July 10, 2009 letter to Ms. Ann Cole, Commission Clerk, Office of the Commission Clerk, Florida Public Service Commission ("Commission), while indicating that "[c]opies have been served to the AT&T Florida," was not properly served upon BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"). AT&T Florida only obtained a copy by happenstance when reviewing, on-line, the Commission's docket sheet in this proceeding. I refer you to Rule 106.104(4), Florida Administrative Code, which requires pleadings and all other documents filed with the Commission be served upon all other parties to the proceeding. I request that you comply with this Rule by forwarding, on the same day it is made, a copy of your filings by email, facsimile, U.S. Mail or next day air.

I also take this opportunity to respond to your concerns regarding why AT&T Florida filed its July 9, 2009 Notice of Filing. Attached to the Notice of Filing were two Exhibits. Exhibit "A" is correspondence between AT&T and Clective Telecom Florida, LLC's ("Clective") respective counsels. Exhibit "B" is the direct testimony of Jeffrey Noack filed on behalf of Global NAPs in a proceeding in front of the Maryland Public Service Commission.

DOCUMENT NUMBER-DATE
07268 JUL 17 8
FPSC-COMMISSION CLERK

As background, pursuant to federal law, AT&T Florida is required to enter into interconnection agreements with CLECs. See Section 251(c) of the Telecommunications Act of 1996. However, AT&T Florida is only required to enter into interconnection agreements with certificated CLECs, i.e. those who have been certified by their state commission to provide CLEC service in a state. These certification requirements not only protect the citizens of Florida by ensuring that telecommunications service providers have the technical, managerial and financial capabilities to operate a telecommunications network to serve the public, but also protect AT&T Florida from being required to enter into business relationships with companies that do not possess these capabilities. Normally, the adoption by CLECs of valid interconnection agreements is a routine matter and AT&T Florida does not object. However, in the instant case, as described in AT&T Florida's Objection and Petition and further below, AT&T Florida has concerns with Clective's "technical, financial and managerial" capabilities. Moreover, because AT&T Florida is required by federal law to enter into interconnection agreements with CLECs, its main protection in dealing with CLECs is that a CLEC is properly certificated. And because, as explained further below, your company's CLEC certificate was obtained based upon what AT&T considers misinformation, this federal requirement provides AT&T Florida with standing to challenge the sufficiency of Clective's certificate, or at a minimum, to request that the Commission investigate the sufficiency of such certificate before entering into a business relationship with Clective.

With regard to Exhibit "A", in Mr. Michael M. Turbes' February 17, 2009 correspondence to Clective, Mr. Turbes asks two questions regarding Mr. Jeffrey Noack and Mr. Joseph Nichols and their relationship with Clective. In response, Mr. Brad Mondschein, Clective's attorney, in correspondence dated February 19, 2009, indicates that:

3. Mr. Noack has been retained by CLECTIVE as a consultant to network architecture and interconnection issues. Mr. Noack has been associated with CLECTIVE for three years and is an independent contractor. While CLECTIVE utilizes Mr. Noack's expertise in a variety of ways, CLECTIVE relies upon its legal counsel for compliance with state and federal regulations.

4. Mr. Noack and Mr. Nichols are indeed the same person. Mr. Noack utilizes the alias Joseph Nichols because of the extreme prejudice that Mr. Noack believes would be associated with his employment at GlobalNaps.

(emphasis added).

The underlined language above is contradictory to the information provided by Clective in its "Application Form for Authority to Provide Competitive Local Exchange Telecommunications Company Service Within the State of Florida" ("Application") filed with the Commission on August 13, 2008 in Docket No. 080545. Item No. 18 of the Application, requests documentation for the following:

- (b) Technical capability: resumes of employees/officers of the company that would indicate sufficient technical experiences or indicate what company has been contracted to conduct technical maintenance.

Clective, in responding to Item No. 18, attaches a document entitled "Clective Telecom Florida, LLC Management/Technical Capabilities." This document provides under "Technical Capabilities" as follows:

Joseph Nichols – Worked for RBOC for 26 years as a network engineer and served in a regulatory capacity for CLEC's. Currently, Joseph serves a Director of Carrier Interconnection for Clective GA, Inc.

This representation in Clective's CLEC application, which the Florida Commission relied upon in granting Clective's certificate, is an outright misrepresentation. Indeed, "Joseph Nichols" is not a real person employed by Clective but, as admitted by Clective, is an alias used by Jeffrey Noack, an employee of Global NAPs. Moreover, upon information and belief, Clective misstates Joseph Nichols a/k/a Jeffrey Noack's status with Clective in that the Application asks for "employees/officers of the company that would indicate sufficient technical experiences" and, as admitted by Clective, Mr. Nichols/Noack is neither an employee or officer but a "consultant" and an "independent contractor" to Clective.

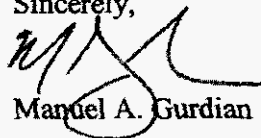
With regard to Exhibit "B", this is Direct Testimony filed by Jeffrey Noack of a Global NAPs entity in a Maryland proceeding. This testimony provides on p. 1, lines 3 through 5 that Mr. Noack is "Director of Network Operations of Global Naps, Inc." and that he has held this position since 1999. This testimony contradicts Clective's representations as indicated above, that Mr. Noack/Nichols was an "employee" of Clective in its Application¹. Moreover, as indicated in AT&T Florida's Objection and Petition, Global NAPs is an entity, which after protracted litigation, was disconnected by AT&T for nonpayment of charges in excess of \$20,000,000 in Florida, Georgia and North Carolina. The Global NAPs companies have also been described by their own representative as "file companies" that "don't do anything", "have no assets" and "have no employees". *Illinois Bell Telephone Company, Inc. v. Global Naps Illinois, Inc.*, 551 F.3d 587, 597 (7th Cir. 2008). The court also described Global NAPs as "a shell" and "the only reason for its existence is that the [parent company] does not want to pay for the communications services bought from [AT&T] in the name of the shell." *Id.*

I trust that you now understand why AT&T objects to entering into an interconnection agreement with a company such as yours: (1) where its principal has

¹ On July 17, 2009, AT&T Florida filed its Second Notice of Filing Additional Documentation in Support of AT&T Florida's Objection and Petition. Attached to this Notice of Filing as Exhibit "C" is Direct Testimony filed by Jeffrey Noack on behalf of Global NAPs, on or about June 20, 2008, in an Illinois Commerce Commission proceeding, which states (at p. 1, lines 2-3) that Mr. Noack is "Director – Network Operations for Global, Inc." (Global NAPs/Global NAPs Illinois, Inc.) and that he has held this position since 1999. This further establishes that Mr. Noack/Nichols was, upon information and belief, not an employee or officer of Clective when it filed its Application with the Commission in August 2008.

made a misrepresentation to this Commission in order to obtain its CLEC certificate; (2) where its affiliated company in Georgia has been disconnected for failure to pay its bills to AT&T; (3) where it is managed by the same individuals as the affiliated company in Georgia; (4) where the affiliated company in Georgia filed in bad faith for bankruptcy in an attempt to avoid disconnection; (5) where it failed to timely pay its regulatory assessment fee to the Commission; (6) where it has failed to indicate that it will agree to the requested deposit amount in Florida; and (7) where it and its Georgia affiliate employ and contract with former² and current employees of Global NAPs, a company that has failed to pay AT&T millions of dollars nationwide and that has admitted that it was established as a shell corporation to avoid payment of its obligations. Accordingly, AT&T Florida is well within its rights to attempt to prevent Clective's practice, in AT&T's opinion, of obtaining services from AT&T and then not paying for said services such as Global NAPs has done in numerous states.

Sincerely,



Mandel A. Gurdian

cc: Ann Cole, Commission Clerk, Florida Public Service Commission
Jerry Hendrix
Gregory R. Follensbee
E. Earl Edenfield, Jr.

739396

² On July 17, 2009, AT&T Florida filed its Second Notice of Filing Additional Documentation in Support of AT&T Florida's Objection and Petition. Attached to this Notice of Filing as Exhibit "D" is a October 26, 2004 email from "Jeff Noack" with Global NAPs to AT&T (BellSouth at the time) indicating that Global NAPs had a "new employee in Atlanta" and "[h]is name is Evan Katz". In its Objection and Petition filed on May 8, 2009, AT&T Florida indicated, at footnote no. 2, that "[i]n 2004, Evan Katz was employed by Global NAPs..." Remarkably, despite this email stating that Evan Katz was an employee of Global NAPs, Clective denies same and claims in its Response to AT&T's Objection and Petition, at footnote no. 1, that "Mr. Katz was a contractor to GlobalNaps in Atlanta, Georgia (not an employee as believed by AT&T."

CERTIFICATE OF SERVICE
Docket No. 090246-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
(*) Electronic Mail, (**) Facsimile and First Class U.S. Mail this 17th day of July, 2009 to
the following:

Teresa Tan (*)
Victor McKay (*)
Staff Counsels
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
vmckay@psc.state.fl.us
ltan@psc.state.fl.us

Clective Telecom Florida, LLC (**)
2090 Dunwoody Club Drive, #106-257
Atlanta, GA 30350
Tel. No. (404) 272-0445
Fax. No. (203) 547-6326



Manuel A. Gurdian