

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** March 4, 2010

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Regulatory Analysis (Bates, Kennedy, King, M. Watts)  
Office of the General Counsel (McKay, Tan)

*Handwritten initials and signatures:* TM, VSM, AT, RK, M, J, etc.

**RE:** Docket No. 090480-TX – Compliance investigation of Clective Telecom Florida, LLC for apparent failure to accurately disclose information on application.

Docket No. 090246-TP – 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.

**AGENDA:** 03/16/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative (090480-TX)  
Argenziano (090246-TP)

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\RAD\WP\090480S.RCM.DOC

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### Case Background

On August 13, 2008, Clective Telecom Florida, LLC (Clective) applied for a Competitive Local Exchange Telecommunications Company (CLEC) certificate to provide local

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telecommunications service in Florida.<sup>1</sup> The Florida Public Service Commission (Commission) issued CLEC Certificate No. 8736 to Clective on October 31, 2008. On May 6, 2009, the Commission issued Proposed Agency Action (PAA) Order No. PSC-09-0298-PAA-TX<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> Based primarily on that information, the Commission, on its own motion, directed staff to open an investigation of Clective's CLEC application.

On September 22, 2009, staff sent a data request to Clective FL. In the data request, staff asked Clective to provide detailed information and documentation concerning its managerial,

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

<sup>2</sup> 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.

<sup>3</sup> 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

<sup>4</sup> 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.

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technical and financial capability, with specific questions concerning Mr. Noack. Clective responded via facsimile on October 6, 2009.

After reviewing Clective's response, staff found additional cause for concern with Clective's CLEC application. On November 17, 2009, staff filed its recommendation in Docket No. 090480-TX, recommending that the Commission cancel Clective's CLEC Certificate No. 8736, and that the Commission 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.).<sup>5</sup> 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, staff withdrew its recommendation from the January 26, 2009 Agenda Conference. This recommendation addresses Clective's settlement offer and the disposition of Docket No. 090246-TP.

The Commission is vested with jurisdiction in these matters pursuant to Sections 364.285, 364.335, 364.337, 364.345, F.S.

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<sup>5</sup> 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.

### Discussion of Issues

**Issue 1:** Should the Commission accept 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?

**Recommendation:** Yes, the Commission should accept 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. (M. Watts/Tan)

**Staff Analysis:** Pursuant to Rule 25-24.820, Florida Administrative Code (F.A.C.), the Commission 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 the Commission 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.

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. The Commission granted Clective a CLEC certificate based upon the resumes and other information provided by Clective with its application.

As noted in the Case Background, staff found multiple instances of Clective's apparent failure to accurately disclose information in its CLEC application. After reviewing staff's

recommendation (filed November 17, 2009) and subsequent discussions with staff, 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 the Commission);
3. to not undertake the offering of telecommunications services in Florida; and
4. to close the business as of December 31, 2009.

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

Accordingly, staff recommends that the Commission should 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.

**Issue 2:** Should these dockets be closed?

**Recommendation:** If the Commission approves staff's recommendation in Issues 1 and 2, and if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the order should become final and Docket Nos. 090480-TX and 090246-TP<sup>6</sup> should be closed upon issuance of a Consummating Order. If the Commission's decision in Issue 1 results in action other than the cancellation of Clective's CLEC Certificate No. 8736, then Docket No 090480-TX should be closed upon issuance of a Consummating Order and Docket No. 090246-TP should remain open pending further action.  
**(Tan)**

**Staff Analysis:** If the Commission approves staff's recommendation in Issues 1 and 2, and if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the order should become final and Docket Nos. 090480-TX and 090246-TP should be closed upon issuance of a Consummating Order. If the Commission's decision in Issue 1 results in action other than the cancellation of Clective's CLEC Certificate No. 8736, then Docket No 090480-TX should be closed upon issuance of a Consummating Order and Docket No. 090246-TP should remain open pending further action.

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<sup>6</sup> Uncertificated CLECs may not provide telecommunications services in Florida and, therefore, cannot adopt an interconnection agreement.