

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (BellSouth Track)

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Docket No. 000121A-TP

Filed: February 3, 2009

**RESPONSE IN OPPOSITION TO AT&T'S REQUEST TO DISMISS CLECS' OBJECTION TO AT&T FLORIDA'S REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Cbeyond Communications, LLC, Deltacom, Inc. and NuVox Communications, Inc. ("Joint CLECs") file this Response in Opposition to AT&T's Request to Dismiss CLEC's Objection to AT&T Florida's Request for Confidential Classification for substantial portions of the audit performed by Staff in this case. As grounds therefore, Joint CLECs state:

1. In April 2008, AT&T commenced the first step in a phased-in approach to implement a more uniform Operations Support Systems ("OSS") for competitive local exchange carriers ("CLECs") to access OSS across AT&T's 22-state operating region ("April Release").
2. Numerous CLEC-impacting issues arose in connection with the April Release.
3. On May 12, 2008, Cbeyond and Deltacom filed a Complaint against AT&T and requested, among other things, that the Commission commence an independent audit of the April Release and prohibit (or stay) AT&T from implementing any further CLEC-impacting OSS releases until AT&T implements the recommendations of the requested independent audit. NuVox intervened and joined in the Complaint on January 5, 2009.

4. On August 5, 2008, the parties entered into a Stipulation wherein they agreed that in lieu of an independent audit, Staff would conduct the audit.<sup>1</sup>

5. Staff conducted the audit and provided a draft report to AT&T on November 26, 2008.

6. On January 9, 2009, AT&T filed a Request for Confidential Classification (“RCC”) of substantial portions of the audit in which it seeks to keep substantial portions of the audit from the public domain.

7. On January 22, 2009, Joint CLECs filed an objection to AT&T’s RCC of the audit.

8. On January 29, 2009, AT&T filed its request to dismiss Joint CLECs’ objection.

9. AT&T requests dismissal of Joint CLECs’ objection alleging 1) it serves no legitimate purpose, 2) it lacks any merit, and 3) it objects to an RCC that is similar to previous, uncontested RCCs. AT&T’s allegations fail because the basis for each is irrelevant.

10. AT&T leads off its response by claiming that Joint CLECs have no legitimate basis to object to AT&T’s RCC because Joint CLEC’s have reviewed the audit without redaction pursuant to a nondisclosure agreement. AT&T also asserts that Joint CLECs cannot credibly contend that the RCC impedes the review of the public version of the audit. Florida law and Commission rules are clear on the basis for confidentiality and the procedure for classification, and neither of AT&T’s claims is relevant under the law. As explained in detail in Joint CLECs’ objection, records in the possession of the Commission are public records unless exempted by law, and a request for confidential classification requires an appropriate demonstration of how the information qualifies for an exemption with the burden of proof on the requesting party.

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<sup>1</sup> Order No. PSC-08-0618-PAA-TP

Unless this standard is met, the information is public record subject to inspection without reason or explanation.

11. Similar to the declarations made in its RCC, AT&T proclaims its RCC fully “comports and complies with applicable law,” cites the flawed explanation included in its RCC, and provides a new explanation for how some of the information in the audit might be deemed to warrant confidential classification. As explained in Joint CLECs’ objection, a declaration of confidentiality coupled with characterizations of the information neither demonstrates a statutory basis for confidentiality nor carries the required burden of proof. AT&T’s recent attempt to create a basis for its request is untimely and should be disregarded.<sup>2</sup>

12. AT&T’s final argument for dismissal of Joint CLECs’ objection is an allegation that the objection is “nothing more than [a] harassing maneuver” designed to waste time and money because AT&T has filed similar RCCs without objection by Joint CLECs. Like its companions above, this argument fails for lack of relevancy. In no way is the objection or lack thereof to a prior RCC part of the calculus for an RCC currently under consideration. AT&T has also failed to identify a prior, sustained RCC classifying information similar to that found in the current audit. Further, the suggestion that an objection to an unsubstantiated request for confidentiality is designed to waste resources is counter to the long held and revered notion that government records in Florida are by default open to the public. The present objection is even more appropriate given the serious and historic failure the RCC attempts to cover.

13. In summary, each of the arguments presented by AT&T in support of its request to dismiss Joint CLECs’ objection to AT&T’s RCC has no basis relevant to the standard for confidentiality created by Florida law.

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<sup>2</sup> However, Joint CLECs would not object to the confidential classification of specific comments by AT&T employees quoted or described in the audit report where such classification is properly and timely requested.

WHEREFORE, for the reasons stated above, Joint CLECs oppose AT&T's Request to Dismiss CLEC's Objection to AT&T Florida's Request for Confidential Classification and request the Commission deny AT&T's request.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response in Opposition to AT&T's Request to Dismiss CLEC's Objection to AT&T Florida's Request for Confidential Classification was served via Electronic Mail and U.S. Mail this 3<sup>rd</sup> day of February, 2009 to the following:

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