

Ruth Nettles

090246-TP

From: Woods, Vickie [vf1979@att.com]
Sent: Monday, August 31, 2009 4:39 PM
To: Filings@psc.state.fl.us
Subject: 090246-TP AT&T Florida's Third Notice of Filing Additional Documentation in Support of its Objection and Petition to Cancel Clective's CLEC Certificate No. 8736
Importance: High
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. 13 pages total in PDF format (includes letter, certificate, pleading and Exhibit E)
- E. AT&T Florida's Third Notice of Filing Additional Documentation in Support of its Objection and Petition to Cancel Clective's
CLEC Certificate No. 8736

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DOCUMENT NUMBER-DATE

9053 AUG 31 8

8/31/2009

FPSC-COMMISSION CLERK



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August 31, 2009

Ms. Ann Cole, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Third Notice of Filing Additional Documentation in Support of its Objection and Petition to Cancel Clective's CLEC Certificate No. 8736, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Manuel A. Gurdian


cc: All parties of record
Jerry Hendrix
Gregory R. Follensbee
E. Earl Edenfield, Jr.

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 31st day of August, 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



Mahuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of Adoption of Existing Interconnection) Docket No. 090246-TP
Agreement between BellSouth)
Telecommunications, Inc. and Cbeyond)
Communications, Inc. by Clective Florida, LLC) Filed: August 31, 2009

**AT&T FLORIDA'S THIRD NOTICE OF FILING ADDITIONAL
DOCUMENTATION IN SUPPORT OF ITS OBJECTION AND PETITION TO
CANCEL CLECTIVE TELECOM FLORIDA, LLC'S
CLEC CERTIFICATE NO. 8736**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida hereby files the attached documentation in support of its Objection and Petition to Cancel Clective Telecom Florida, LLC's ("Clective") CLEC Certificate No. 8736. The document attached as Exhibit "E" is portion of a transcript from a proceeding before the Public Utilities Commission of Ohio in Case No. 08-690-TP-CSS on August 5, 2009 in which Global Naps, Inc. witness, Jeffrey Noack a/k/a Joseph Nichols testified regarding his relationship with Clective.

1. On pages 166-167, Mr. Noack testified that he had never been employed by Clective.

Q. Have you ever been employed by a competitive local exchange carrier called Clective that operates in Florida and Georgia?"

A. No.¹

Q. You've never been employed by them?

A. No.

2. On page 169, Mr. Noack testified regarding Clective's CLEC Application where he is listed as "Joseph Nichols."

¹ This contradicts Clective's answer to question no. 18 on the CLEC Application filed on August 13, 2008 with the Commission in Docket No. 080545 that Mr. Nichols was an employee of "the company that would indicate sufficient technical experiences."

DOCUMENT NUMBER - DATE

09053 AUG 31 09

FPSC-COMMISSION CLEFP

Q. Okay. This reference to Joseph Nichols indicates that he worked for RBOC for 26 years as a network engineer and served in a regulatory capacity responsible for CLECs and is currently serving as Director of Carrier Interconnection for Clective Georgia, Inc., with 35 years of experience; correct?

A. Yes.

Q. Okay. Is that person, Joseph Nichols, you?

A. I was referred to as that, yes.

Q. I'm sorry?

A. Yes.

Q. That is you?

A. (Witness nods head.)

3. On page 173, Mr. Noack testified that he did not agree with the statements in Brad Mondschein's February 19, 2009 correspondence to AT&T Florida regarding Mr. Noack's status with Clective.

Q. Have you actually been retained by Clective?

A. No.

Q. So go to Paragraph 3 in that letter, and it states that, "Mr. Noack has been retained by Clective as a consultant relating to network architecture and interconnection issues," and that he has been associated with Clective for "three years as an independent contractor," and at the same time he – do you agree with those two statements?"

A. No.

4. On page 186, Mr. Noack admits consulting under the name "Joseph Nichols." Mr. Noack denies authorizing Clective to file documents with the Florida Public Service Commission under his alias "Joseph Nichols or otherwise" and that he

was not aware that Clective had done so prior to the documents being presented to him under cross-examination by an AT&T Ohio attorney.

Q. And did you, in fact, consult with them under the alias Joseph Nichols?

A. Yes.

Q. Did you authorize them to represent you on any papers filed with the Telecom Commission either under the name Joseph Nichols or otherwise?

A. No.

Q. Were you aware, prior to receiving this document today, that they had done so?

A. No, sir.

5. On page 187, Mr. Noack admits that he sent emails to BellSouth

representatives on behalf of Clective using the alias Joseph Nichols.

Q. Did you send e-mails to BellSouth employees on behalf of Clective using the alias Joseph Nichols?

A. Yes.

Respectfully submitted this 31st day of August, 2009.

AT&T FLORIDA



E. EARL EDENFIELD JR.

TRACY W. HATCH

MANUEL A. GURDIAN

c/o Gregory R. Follensbee

150 South Monroe Street, Ste. 400

Tallahassee, FL 32301

(305) 347-5558

Exhibit E

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the	:	
Complaint of AT&T Ohio,	:	
	:	
Complainant,	:	
	:	Case No. 08-690-TP-CSS
v.	:	
	:	
Global NAPs Ohio, Inc.,	:	
	:	
Respondent.	:	

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PROCEEDINGS

Before Jay S. Agranoff, Hearing Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-G, Columbus, Ohio, called at 9:00 a.m. on Wednesday, August 5, 2009.

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VOLUME II

- - -

ARMSTRONG & OKEY, INC.
 222 East Town Street, Second Floor
 Columbus, Ohio 43215-4620
 (614) 224-9481 - (800) 223-9481
 Fax - (614) 224-5724

- - -

CROSS-EXAMINATION

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By Ms. Fenlon:

Q. Good morning again.

A. Good morning.

Q. Sorry to jump in there too early. Let's go right into your testimony. At Lines 3 and 4 of your testimony, at Page 1 you state that you are Director of Network Operations of Global NAPs, and I believe that you --

A. Sorry.

Q. -- just stated that you were Director of Net --

A. That's correct, Network Operations.

Q. -- Network operations? Okay. Have you ever been employed by Global NAPs Ohio, Inc.?

A. Not to my knowledge. Global NAPs, Inc. is the entity that I believe I'm employed by.

HEARING EXAMINER AGRANOFF: Mr. Noack, can you speak up a little? It's hard to hear you.

A. Sorry. I believe that I'm employed by Global NAPs, Inc.

Q. To your knowledge, you're not or have never worked for Global NAPs Ohio; correct?

A. I -- correct.

[Q. Have you ever been employed by a]

1 competitive local exchange carrier called Clective that
2 operates in Florida and Georgia?

3 A. No.

4 Q. You've never been employed by them?

5 A. No.

6 Q. In Clective's application for
7 certification that was submitted before the Florida
8 Public Service Commission in August of 2008 you were
9 identified not as Jeffrey Noack but as Joseph Nichols.
10 Were you not working for Clective, if you were listed
11 as --

12 MR. DAVIDOW: Objection.

13 HEARING EXAMINER AGRANOFF: I don't know
14 what that sound is.

15 (Discussion off the record.)

16 HEARING EXAMINER AGRANOFF: Your
17 objection, Mr. Davidow?

18 MR. DAVIDOW: Assumes facts not in
19 evidence.

20 MS. FENLON: Your Honor, if I may approach
21 the witness?

22 HEARING EXAMINER AGRANOFF: Certainly.

23 MR. DAVIDOW: Do you have a copy for me?

24 MS. FENLON: Yes.

25 Q. I hand you to you what's been marked as

1 subcategory Technical Capabilities, with a number of
2 people listed under there? Do you see that?

3 MR. DAVIDOW: I'm not testifying.

4 MS. FENLON: You were saying you didn't
5 see it. Do you have that page?

6 MR. DAVIDOW: I have a page.

7 Q. Do you see that?

8 A. Yes.

9 Q. Okay. This reference to Joseph Nichols
10 indicates that he worked for RBOC for 26 years as a
11 network engineer and served in a regulatory capacity
12 responsible for CLECs and is currently serving as
13 Director of Carrier Interconnection for Clective
14 Georgia, Inc., with 35 years of experience; correct?

15 A. Yes.

16 Q. Okay. Is that person, Joseph Nichols,
17 you?

18 A. I was referred to as that, yes.

19 Q. I'm sorry?

20 A. Yes.

21 Q. That is you?

22 A. (Witness nods head.)

23 Q. I now hand to you --

24 MS. FENLON: May I approach the witness?

25 HEARING EXAMINER AGRANOFF: Yes.

1 alias with the State Commission and not reveal his true
2 identity to that State Commission.

3 HEARING EXAMINER AGRANOFF: I'll allow the
4 line of questioning for the time being.

5 Q. Mr. Noack, did you get an opportunity to
6 review this statement before the letter was sent to the
7 AT&T attorney?

8 A. No.

9 Q. Have you been actually retained by
10 Clective?

11 A. No.

12 Q. So go to Paragraph 3 in that letter, and
13 it states that, "Mr. Noack has been retained by
14 Clective as a consultant relating to network
15 architecture and interconnection issues," and that he
16 has been associated with Clective for "three years as
17 an independent contractor," and at the same time he --
18 do you agree with those two statements?

19 A. No.

20 Q. If you go back to Cross Exhibit No. 1, the
21 Florida application, the very last page that we were
22 looking at earlier where your name appears -- where
23 your alias Joseph Nichols appears?

24 A. Yes.

25 Q. Under the subheading of Management

1 Clective Telecom Florida?

2 A. It was what I thought was an innocent
3 relationship. I simply tried to help a friend.

4 Q. And did you, in fact, consult with them
5 under the alias Joseph Nichols?

6 A. Yes.

7 Q. Did you authorize them to represent you on
8 any papers filed with the Telecom Commission either
9 under the name Joseph Nichols or otherwise?

10 A. No.

11 Q. Were you aware, prior to receiving this
12 document today, that they had done so?

13 A. No, sir.

14 Q. Were you ever paid anything by --

15 A. No, sir.

16 Q. This was essentially a non-remunerative
17 relationship?

18 MR. BINNIG: I'll object. That's a
19 leading question.

20 A. I was not paid. I was helping --

21 HEARING EXAMINER AGRANOFF: Wait. Excuse
22 me. Rephrase the question.

23 MR. DAVIDOW: I think I already have my
24 answer, he was not paid. That was asked and answered,
25 I believe.

1 Q. Do you see any way that the assistance you
2 provided Clective could have affected in any fashion
3 the testimony that you've given in this case?

4 A. No, sir.

5 Q. I have no further questions.

6 HEARING EXAMINER AGRANOFF: Anything on
7 recross?

8 RE-CROSS-EXAMINATION

9 By Ms. Fenlon:

10 Q. Did you send e-mails to BellSouth
11 employees on behalf of Clective using the alias Joseph
12 Nichols?

13 A. Yes.

14 Q. That's it.

15 HEARING EXAMINER AGRANOFF: Thank you. I
16 have some questions.

17 EXAMINATION

18 By Hearing Examiner Agranoff:

19 Q. Have you ever made any other appearances
20 or signed any other documents using the alias Joseph
21 Nichols?

22 A. No, sir.

23 Q. I think you were describing the ordering
24 process between Global NAPs Ohio and AT&T. You
25 indicated that the trunks that have been provisioned