

**Marguerite McLean**

090246-TP

**From:** Woods, Vickie [vf1979@att.com]  
**Sent:** Friday, September 04, 2009 2:21 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 090246-TP AT&T Florida's Objection to Clective Telecom Florida, LLC's Request for Specified Confidential Classification  
**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](mailto: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. 7 pages total in PDF format (includes letter, certificate and pleading)

E. AT&T Florida's Objection to Clective Telecom Florida, LLC's Request for Specified Confidential Classification  
 .pdf

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9/4/2009

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Manuel A. Gurdian  
Attorney

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September 4, 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  
Objection to Clective Telecom Florida, LLC's Request for Specified Confidential  
Classification, 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.

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**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 4th day of September 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](mailto:vmckay@psc.state.fl.us)  
[ltan@psc.state.fl.us](mailto: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



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Manuel 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: September 4, 2009

**AT&T FLORIDA'S OBJECTION TO CLECTIVE TELECOM FLORIDA, LLC'S  
REQUEST FOR SPECIFIED CONFIDENTIAL CLASSIFICATION**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") hereby files its Objection to Clective Telecom Florida, LLC's ("Clective") Request for Specified Confidential Classification ("Request") filed on August 28, 2009 with the Florida Public Service Commission ("Commission"). In support of its Objection, AT&T Florida states as follows:

**Introduction**

1. On or about April 24, 2009, Clective filed a Notice of Adoption of an existing interconnection agreement between AT&T Florida and Cbeyond Communications, Inc.
2. On or about May 8, 2009, AT&T Florida filed its Objection to Notice of Adoption and Petition to Cancel Clective's CLEC Certificate No. 8736.
3. On or about August 18, 2009, the Commission ordered Staff to investigate Clective's misrepresentations made on its CLEC Application and whether Clective has sufficient financial, managerial and technical capability to operate as a CLEC in Florida.
4. On or about August 28, 2009, Clective filed its Request for Specified Confidential Classification, pursuant to Rule 25-22.006, Florida Administrative Code, and Section 364.183, Florida Statutes for certain materials which Clective indicates contain "confidential revenue, cost, and sales information that are deemed proprietary" by it. Clective further provides that "[p]ublic disclosure of this information would cause

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competitive harm to Clective and provide competitors with an unfair advantage in the market place” and that the information is “valuable and Clective strives to keep it secret.”

**Standard Governing Requests for Confidential Classification**

5. Pursuant to Section 119.01, Florida Statutes, documents submitted to this Commission are public records. This presumption is based on the concept that government should operate in the "sunshine." The right of access to governmental records is an important and longstanding Florida tradition embodied in both Florida Statutes and the Declaration of Rights provision of the state Constitution. See Order No. PSC-05-1026-CFO-TP and Order No. PSC-04-1111-CFO-TL.

6. The Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. *Seminole County v. Wood*, 512 So. 2d 1000 (Fla 5th DCA 1987). See also, *City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So.2d 19 (Fla. 2d DCA 1998).

7. The determination of whether information is proprietary confidential business information is a matter of discretion. *Florida Society of Newspaper Editors, Inc. v. Florida Public Service Commission*, 543 So. 2d 1262, 1265 (1st DCA 1989). When determining whether information should be deemed confidential, the Commission should weigh the public interest in disclosing the information with the potential harm to the entity if the information were disclosed. See *In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (AT&T FLORIDA TRACK)*, Docket No. 000121A-TP; Order No. PSC-09-0246-CFO-TP (Issued April 23, 2009).

8. Exceptions to the presumption that documents submitted to the Commission are public records, are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. *See Id.* Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm. *See Id.*

**Clective Has Failed to Meet the Clear Standard for a Facially Sufficient Request**

9. Clective's Request should be denied because it is facially insufficient.

10. Clective seeks to redact its entire filing on the basis that the documents contain "confidential revenue, cost, and sales information that are deemed proprietary". Moreover, Clective contends that "[p]ublic disclosure of this information would cause competitive harm to Clective and provide competitors with an unfair advantage in the market place" and that the information is "valuable and Clective strives to keep it secret."

11. The burden is on Clective to demonstrate how the information qualifies as "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." Rule 25-22.006(4)(e).

However, Clective fails to provide any demonstration of how the redacted information qualifies under Section 364.183(3), Florida Statutes.<sup>1</sup> Instead, its request characterizes the information as "confidential" and asserts that the "[p]ublic disclosure of this information would cause competitive harm to Clective and provide competitors with an

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<sup>1</sup> Clective also fails to provide a "line-by-line or field-by-field justification for confidential classification" required by Rule 25-22.006(4)(c).

unfair advantage in the market place” and that it is “valuable and Clective strives to keep it secret.”

12. None of the assertions in Clective’s Request demonstrate how the information relates to Clective’s competitive interests or how the information would impair the competitive business of Clective if disclosed. Instead, the Request merely declares the information “confidential” and refers vaguely to it being “valuable” and causing “competitive harm.”

13. Since these assertions do not demonstrate how the redacted information qualifies as “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information,” Clective’s request is facially insufficient because it fails to provide the requested justification and should be denied. *See* Rule 25-22.006(4)(e)(“A request for confidential classification that fails to identify the material for which confidential classification is sought in sufficient detail to permit a reasoned analysis or which fails to provide the required justification for classification may be denied as insufficient on its face”).

**Clective Has Failed to Meet Its Burden of Proof for  
a Substantively Sufficient Request**

14. Even if Clective’s request for confidential classification is deemed facially sufficient for consideration, it should be denied because Clective has not met its burden of proof.

15. As described above, Clective has failed to provide any demonstration for its asserted confidentiality by way of explanation within its request for confidential classification. Instead Clective provided general assertions and vague possibilities of harm.

16. The redacted information is described as “confidential revenue, cost, and sales information.” None of this redacted information appears to fall within Section 364.183 because there is no indication that the disclosure of such information will impair the competitive business of Clective as there is no explanation of competitive impairment offered by Clective and no apparent competitive impairment is created by disclosure.

17. Clective has provided no demonstration showing how the redacted information meets the statutory example of confidential proprietary business information. Further, the redacted information does not appear to be “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.” Therefore, Clective, has failed to provide proof required by Rule 25-22.006(4)(e), F.A.C., showing “that the material in question contains bona fide proprietary confidential business information,” and Clective’s Request must be denied.

WHEREFORE, for the reasons stated above, AT&T Florida objects to Clective’s Request for Confidential Classification as facially and substantively insufficient.

Respectfully submitted this 4th day of September, 2009.

AT&T FLORIDA



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